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April 12, 2013

Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.

<p style="text-align: right;">Page 93</p> <p>(10:54-10:55)</p> <p>1 are going to be stored and they determined where we're</p> <p>2 going to conduct the paperwork. So, wherever we were,</p> <p>3 we were invited to be there. We asked, "Where would</p> <p>4 you like us to conduct this?" So the break room is</p> <p>5 where they had selected. The records location is</p> <p>6 where they selected.</p> <p>7 Q. That's not my question.</p> <p>8 A. Okay.</p> <p>9 Q. My question is much simpler than that, Agent.</p> <p>10 First of all, the statute required them to --</p> <p>11 A. Maintain them.</p> <p>12 Q. -- keep these records, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And the statute required them to segregate</p> <p>15 those records from any other records, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And I gather that you would expect somebody</p> <p>18 who is keeping records -- well, back up.</p> <p>19 Those records contained some pretty private</p> <p>20 information about people, didn't they?</p> <p>21 MS. WYER: Objection.</p> <p>22 A. It contained driver's license information. So</p> <p>23 the information that would be contained on a driver's</p> <p>24 license.</p> <p>25 Q. (By Mr. Murray) IDs, date of birth, correct?</p>	<p style="text-align: right;">Page 95</p> <p>(10:56-10:57)</p> <p>1 A. And we have discussed that before. So, absent</p> <p>2 2257 inspection, as an FBI agent, if I were there as</p> <p>3 part of a criminal investigation and I want to go</p> <p>4 there to search for evidence, yes, I would require a</p> <p>5 warrant.</p> <p>6 Q. (By Mr. Murray) And the same would be true of</p> <p>7 the area depicted on page 123, correct?</p> <p>8 A. I don't know if that's --</p> <p>9 MS. WYER: Objection. Calls for</p> <p>10 speculation.</p> <p>11 A. Again, I don't know if that's a public area or</p> <p>12 not.</p> <p>13 Q. (By Mr. Murray) Well, it's called a break</p> <p>14 room, correct?</p> <p>15 A. Uh-huh. That's correct. That's how it was</p> <p>16 labeled on the photo log.</p> <p>17 Q. And it's got a table and chairs, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And a microwave oven, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Assuming it was accurately described as a</p> <p>22 break room, a place where employees would go to take a</p> <p>23 break, isn't it true that, before an FBI agent could</p> <p>24 enter that area, if it weren't for 2257, the FBI agent</p> <p>25 on an official investigation of criminal activity</p>
<p style="text-align: right;">Page 94</p> <p>(10:55-10:56)</p> <p>1 A. Yes.</p> <p>2 Q. In some cases, Social Security numbers if</p> <p>3 they're on the driver's license?</p> <p>4 MS. WYER: Objection.</p> <p>5 A. I don't believe that was on the driver's</p> <p>6 license.</p> <p>7 Q. (By Mr. Murray) Okay. And stage names,</p> <p>8 nicknames, aliases, private information about people,</p> <p>9 correct?</p> <p>10 MS. WYER: Objection.</p> <p>11 A. That information was in the records. Yes.</p> <p>12 Q. (By Mr. Murray) Okay. Well, you wouldn't</p> <p>13 expect these producers to keep those records in a</p> <p>14 place where any member of the general public can just</p> <p>15 walk in and start examining them, would you?</p> <p>16 A. No.</p> <p>17 Q. Getting back to my question, it is true, is it</p> <p>18 not, that the area that is depicted on page 122 is an</p> <p>19 area where, if it weren't for 2257, an FBI agent on</p> <p>20 official business wanting to enter that area on a</p> <p>21 criminal investigation, absent exigent circumstances</p> <p>22 and/or voluntary consent, would need a search warrant,</p> <p>23 correct?</p> <p>24 MS. WYER: Objection. The witness has</p> <p>25 testified he was not at this inspection.</p>	<p style="text-align: right;">Page 96</p> <p>(10:57-10:59)</p> <p>1 would need a search warrant?</p> <p>2 MS. WYER: Objection. Lack of foundation</p> <p>3 and calls for speculation.</p> <p>4 A. If the agent were there on official business</p> <p>5 conducting a criminal investigation, yes, they would</p> <p>6 need a warrant without the things that you have</p> <p>7 mentioned.</p> <p>8 Q. (By Mr. Murray) Right. Without exigent</p> <p>9 circumstances or voluntary consent?</p> <p>10 A. Correct.</p> <p>11 Q. And the same is true that, without 2257, the</p> <p>12 FBI agent would need a search warrant, absent exigent</p> <p>13 circumstances or voluntary consent, to examine the</p> <p>14 records that were in those file cabinets documenting</p> <p>15 the performers' names and dates of birth?</p> <p>16 MS. WYER: Objection, form. Without</p> <p>17 2257, there would be no 2257 records.</p> <p>18 Q. (By Mr. Murray) You can answer the question.</p> <p>19 A. Absent the 2257 inspection, to look at a</p> <p>20 company's records without their consent, without</p> <p>21 exigent circumstances, yes, you would need a warrant.</p> <p>22 Q. Okay. Thank you.</p> <p>23 Were any minors found on this inspection?</p> <p>24 A. No.</p> <p>25 Q. I want to show you what has been marked as</p>

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<p style="text-align: right;">Page 97</p> <p>(10:59-11:01)</p> <p>1 Plaintiff's Exhibit 3. Darkside is the name.</p> <p>2 A. Okay.</p> <p>3 MS. WYER: What is the serial?</p> <p>4 MR. MURRAY: 11. You mean -- is that</p> <p>5 what you mean, this number here?</p> <p>6 MS. WYER: Uh-huh.</p> <p>7 Q. (By Mr. Murray) All right. Plaintiff's</p> <p>8 Exhibit 3 is another record maintained in the ordinary</p> <p>9 course of business by the FBI pertaining to these</p> <p>10 inspections, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And this one is Darkside Entertainment; is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And the date of that inspection was September</p> <p>16 12, 2006; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Let me just show you again. So far, returning</p> <p>19 to Plaintiff's Exhibit 39, that's the 22 -- that's</p> <p>20 2257 that was effective July 27, 2006, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So far, all of the inspections that we've</p> <p>23 talked about have occurred after July 27, 2006,</p> <p>24 correct?</p> <p>25 A. I'd have to look at the other two.</p>	<p style="text-align: right;">Page 99</p> <p>(11:02-11:04)</p> <p>1 I'm not familiar with</p> <p>2 Q. But the protocol that was set up was such</p> <p>3 that, with a couple exceptions that we'll get to, no</p> <p>4 advance notice was to be given, correct? That was the</p> <p>5 protocol?</p> <p>6 A. That's correct.</p> <p>7 Q. And Special Agent Joyner was charged with the</p> <p>8 responsibility of carrying out that protocol as well,</p> <p>9 correct --</p> <p>10 MS. WYER: Objection.</p> <p>11 Q. -- in the inspections that he did?</p> <p>12 A. Could you say that again, please?</p> <p>13 Q. He was charged with the responsibility of</p> <p>14 carrying out that same protocol in any inspections</p> <p>15 that he did; namely, the protocol called for him not</p> <p>16 to give advance warning, correct?</p> <p>17 MS. WYER: You said "Joyner."</p> <p>18 Q. (By Mr. Murray) I'm sorry. Lawrence.</p> <p>19 Special Agent Lawrence was responsible for</p> <p>20 carrying out the protocol that you had developed for</p> <p>21 this program, correct, when he did an inspection?</p> <p>22 A. In general, yes. Per 2257, advance notice is</p> <p>23 not to be given. There were times when we did give</p> <p>24 advance notice.</p> <p>25 Q. And we'll get to those when we --</p>
<p style="text-align: right;">Page 98</p> <p>(11:01-11:02)</p> <p>1 Q. Yeah. Let's be sure about that.</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And this Plaintiff's Exhibit 3 also</p> <p>4 occurred after July 27, 2006, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Now, if you would turn to page 178.</p> <p>7 Are you there?</p> <p>8 A. Yes, I am.</p> <p>9 Q. Okay. So this indicates this was your report,</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you've made the report on September 22nd;</p> <p>13 is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. All right. The inspection was in Van Nuys,</p> <p>16 California, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. It says that you had previously visited</p> <p>19 Darkside Enter -- that reminds me.</p> <p>20 Of the inspections that we've seen so far, no</p> <p>21 advance notice was given to the parties inspected,</p> <p>22 correct?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. I can only speak to the one that I conducted,</p> <p>25 and no advance notice was given at</p>	<p style="text-align: right;">Page 100</p> <p>(11:04-11:05)</p> <p>1 A. Okay.</p> <p>2 Q. -- tet to them. But in most of the 29, no</p> <p>3 advance notice was given?</p> <p>4 A. In most of them, that's correct.</p> <p>5 Q. Okay. So, anyway, what's interesting is on</p> <p>6 this one you say that you had visited Darkside</p> <p>7 Entertainment on Friday, September 8th, but no one was</p> <p>8 present during the morning hours. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then you say, "Due to this, Darkside</p> <p>11 Entertainment likely had advance notice of the</p> <p>12 inspection," correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And why would you come to that conclusion if</p> <p>15 no one was there when you showed up the first time?</p> <p>16 A. I don't remember this. I don't know if it's</p> <p>17 in a business complex. I don't know if somebody else</p> <p>18 would have seen us. I don't know.</p> <p>19 Q. Okay. Anyway, that was your conclusion at the</p> <p>20 time that you wrote the report?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And the person that you encountered</p> <p>23 there was Mr. Fred Wilson, the general manager,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">Page 101</p> <p>(11:05)</p> <p>1 Q. And he was present during the inspection?</p> <p>2 A. Correct.</p> <p>3 Q. As was the owner of the business?</p> <p>4 A. No. The owner was not present.</p> <p>5 Q. Oh, I'm sorry. Was not present. He was</p> <p>6 attending to his ill father; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. If you look at the bottom of the page,</p> <p>9 you determined that Darkside had 2257 violations,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. They didn't have the records for one of the</p> <p>13 movies; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. The photograph of one of the performers was of</p> <p>16 such poor quality that you couldn't make it out?</p> <p>17 A. Correct.</p> <p>18 Q. Kind of like the photographs that you've</p> <p>19 provided me?</p> <p>20 A. Yes, sir.</p> <p>21 MS. WYER: Objection.</p> <p>22 MR. MURRAY: I'm just trying to do a</p> <p>23 little humor. It wasn't anything other than that.</p> <p>24 MS. WYER: Well, the witness did not</p> <p>25 provide you with those.</p>	<p style="text-align: right;">Page 103</p> <p>(11:07-11:08)</p> <p>1 had been Xeroxed so many times and you just end up</p> <p>2 with a dark blob.</p> <p>3 Q. Right.</p> <p>4 A. So that would be my guess why this one was not</p> <p>5 identifiable.</p> <p>6 Q. Well, you indicated on page 178 that the</p> <p>7 photograph was of such poor quality --</p> <p>8 A. Okay.</p> <p>9 Q. -- it was not identifiable, correct?</p> <p>10 A. Okay.</p> <p>11 Q. But they had a photo. It was just of poor</p> <p>12 quality and you couldn't verify the date of birth,</p> <p>13 correct?</p> <p>14 A. No. You couldn't identify it by facial</p> <p>15 recognition. You were not able to make out the facial</p> <p>16 characteristics of the individual.</p> <p>17 Q. But you were able to see the date of birth?</p> <p>18 A. I don't see that here, and the date of birth</p> <p>19 is not mentioned in the report. So, as this is</p> <p>20 written, we have the screen capture of the performer</p> <p>21 and they're saying here's the ID for this performer,</p> <p>22 but you can't make a match because you can't see a</p> <p>23 facial recognition from the ID.</p> <p>24 Q. I see.</p> <p>25 A. So that would be the violation is that the</p>
<p style="text-align: right;">Page 102</p> <p>(11:06-11:07)</p> <p>1 MR. MURRAY: Okay.</p> <p>2 Q. (By Mr. Murray) And you had another problem</p> <p>3 with the cross-referencing here, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. That seemed to be one of the more common</p> <p>6 violations. Do you recall that being the case?</p> <p>7 A. Going back six or seven years, I do think that</p> <p>8 was -- when there were violations, I do believe that</p> <p>9 was one of the more common.</p> <p>10 Q. Okay. All right. And then on page 179, you</p> <p>11 said one performer appeared underage, but a DMV check</p> <p>12 was run to determine her true date of birth.</p> <p>13 Investigation determined photo identification was</p> <p>14 authentic and she was of legal age at the time of the</p> <p>15 filming; is that correct?</p> <p>16 A. That's what it states. Yes.</p> <p>17 Q. But that was your report, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. So, if you go to page 181 on the</p> <p>20 findings, No. 3 of the findings, of the movie, "In the</p> <p>21 Thick #4," the photo identification for a particular</p> <p>22 person was not identifiable. Again, that was because</p> <p>23 it wasn't legible enough? It was of poor quality?</p> <p>24 A. I don't remember this specific one, but most</p> <p>25 of those that were not identifiable was because they</p>	<p style="text-align: right;">Page 104</p> <p>(11:08-11:09)</p> <p>1 date of birth may have been of legal age but we don't</p> <p>2 know that these two are the same people.</p> <p>3 Q. I see. And, so, because the photo that they</p> <p>4 had was of poor quality, that actually constituted a</p> <p>5 violation of the law?</p> <p>6 MS. WYER: Objection.</p> <p>7 Q. (By Mr. Murray) Is that what you're saying in</p> <p>8 this finding?</p> <p>9 A. Yes. According to 75.2, they have to maintain</p> <p>10 a legible copy of identification.</p> <p>11 Q. And, so, that could be prosecuted as a felony</p> <p>12 if the U.S. Attorney decided to do so, correct?</p> <p>13 MS. WYER: Objection.</p> <p>14 A. That would be up to the U.S. Attorney's Office</p> <p>15 what to prosecute, what not to prosecute.</p> <p>16 Q. (By Mr. Murray) Right. But not having a</p> <p>17 legible photograph is a felony in this context, isn't</p> <p>18 it?</p> <p>19 MS. WYER: Objection. The witness has</p> <p>20 not testified he understands what is or is not a</p> <p>21 felony.</p> <p>22 A. Yes.</p> <p>23 MR. MURRAY: Will you read the question</p> <p>24 back and the answer so I know?</p> <p>25 (Requested testimony read back)</p>

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<p style="text-align: right;">Page 105</p> <p>(11:09-11:10)</p> <p>1 Q. (By Mr. Murray) And No. 4, the records were</p> <p>2 not properly cross-referenced, correct?</p> <p>3 A. Can I ask you a question just so I'm clear?</p> <p>4 Q. Actually, you don't get to ask questions.</p> <p>5 A. I don't get to ask questions?</p> <p>6 Q. No. That's the beauty of --</p> <p>7 A. I was going to have you define a felony for</p> <p>8 me. I think I know what it is, but okay.</p> <p>9 Q. Well, what is your understanding of a felony</p> <p>10 under federal law?</p> <p>11 A. If it's punishable by more than one year.</p> <p>12 Q. And under 2257, we went over the penalty</p> <p>13 provisions and it is punishable for greater than a</p> <p>14 year, correct?</p> <p>15 A. Yes, sir.</p> <p>16 MS. WYER: Objection.</p> <p>17 Q. (By Mr. Murray) Now, No. 4, the records were</p> <p>18 not properly cross-referenced, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. So, again, that doesn't mean -- they might</p> <p>21 have had all the records they needed to maintain, but</p> <p>22 they didn't have a system that would enable the</p> <p>23 records to be cross-referenced with other records. Is</p> <p>24 that what you're saying?</p> <p>25 A. No, because they don't have all the records.</p>	<p style="text-align: right;">Page 107</p> <p>(11:11-11:12)</p> <p>1 correctly, and that would be a violation.</p> <p>2 Q. Okay. Now go to page 186. This was an</p> <p>3 inspection that began at 9:20 a.m., correct?</p> <p>4 A. Yes.</p> <p>5 Q. And, again, as all these inspections that you</p> <p>6 participated in, five to seven Government personnel,</p> <p>7 correct, were there?</p> <p>8 A. Yes, sir.</p> <p>9 Q. You took photographs of the business and the</p> <p>10 room where the 2257 records were stored, correct?</p> <p>11 A. That's correct.</p> <p>12 MS. WYER: Objection. I'm going to make</p> <p>13 a standing objection to all of this testimony because</p> <p>14 the witness has not testified that he independently</p> <p>15 remembers any of this.</p> <p>16 MR. MURRAY: Okay.</p> <p>17 Q. (By Mr. Murray) And then, of course, the</p> <p>18 records were reviewed, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And copies were made of the records that you</p> <p>21 reviewed, the specific records you reviewed, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And those copies were taken with you when you</p> <p>24 left, correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 106</p> <p>(11:10-11:11)</p> <p>1 If they're not cross-referenced correctly, then</p> <p>2 they're missing records. So, if it's not -- if it</p> <p>3 doesn't list all the stage names, maiden names, all</p> <p>4 other aliases, then those are missing records; and if</p> <p>5 they have not cross-referenced that correctly, then</p> <p>6 that is a violation.</p> <p>7 Q. Well, the section that you cite says, "Records</p> <p>8 required to be maintained under this part shall be</p> <p>9 categorized and retrievable to: All names of each</p> <p>10 performer, including any alias, maiden name, nickname,</p> <p>11 stage name or professional name." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So could it be -- if they have a record that</p> <p>14 contains all that information but it's only</p> <p>15 retrievable -- let's say it's a computer. If it's</p> <p>16 only retrievable by the true name rather than plugging</p> <p>17 in the stage name, isn't that a cross-reference</p> <p>18 violation?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So they could actually have all the</p> <p>21 information in their record system, but if it's not</p> <p>22 retrievable by all of these various categories, that</p> <p>23 could be a -- that's a violation?</p> <p>24 A. Yes. It's possible they could have all the</p> <p>25 information but have not cross-referenced it</p>	<p style="text-align: right;">Page 108</p> <p>(11:13-11:14)</p> <p>1 Q. And then you took photographs of the room just</p> <p>2 before you left, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. This inspection took about just under four</p> <p>5 hours, correct?</p> <p>6 A. Correct.</p> <p>7 Q. All right. Now, if you would look at -- page</p> <p>8 208 of this exhibit is a log of the eight photographs</p> <p>9 that were taken of the premises; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And then if you look at some of these</p> <p>12 photographs -- go to page 211.</p> <p>13 A. Okay.</p> <p>14 Q. That's a photograph of the door leading to the</p> <p>15 premises?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know who that guy is walking with the</p> <p>18 briefcase?</p> <p>19 A. That's me.</p> <p>20 Q. I was going to say it looks kind of like you.</p> <p>21 A. Yeah. That's me.</p> <p>22 Q. And then the next page is another picture of</p> <p>23 the outside of this business?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And if you look at page 214, again, it's</p>

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(11:14-11:15)

1 hard -- these are -- these would be 2257 violations if
2 these were -- I'm sorry.
3 214 is a picture that at least we can make out
4 that are file cabinets there, correct?
5 **A. Yes, sir.**
6 Q. Then it looks like one of the drawers is open?
7 **A. That's correct.**
8 Q. And there are records inside?
9 **A. Yes.**
10 Q. And that's where the records were stored,
11 correct?
12 **A. That's correct.**
13 Q. And, again, that's an area where, absent 2257,
14 an FBI agent would need a search warrant before he
15 could enter those premises on an official
16 investigation if he didn't have exigent circumstances
17 or voluntary consent?
18 **MS. WYER: Objection. Lack of foundation**
19 **and calls for speculation.**
20 **A. Absent 2257 inspections, if conducting a**
21 **criminal investigation looking for evidence of that**
22 **criminal activity, yes, you would need a warrant.**
23 Q. (By Mr. Murray) To enter that area?
24 **A. Correct.**
25 Q. Okay. And to look through those records?

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(11:15-11:16)

1 **A. Yes, sir.**
2 Q. Look at page 216.
3 **A. Okay.**
4 Q. Is that a picture of the area where you and
5 the other agents were?
6 **A. According to the photo log, it's a work area.**
7 **Yes.**
8 Q. And "work area" means work area for you?
9 **A. Where we were set up to work.**
10 Q. And, again, that's an area -- same question.
11 Absent 2257, an official investigation of a criminal
12 nature, the FBI would need a search warrant to enter
13 that area absent exigent circumstances or voluntary
14 consent?
15 **MS. WYER: Objection. Assumes facts not**
16 **in evidence, lack of foundation, calls for**
17 **speculation.**
18 **A. Absent exigent circumstances or absent the**
19 **consent of the owner and absent 2257, if we're there**
20 **to conduct a criminal investigation, yes, we would**
21 **need a warrant.**
22 Q. (By Mr. Murray) Okay. By the way, after each
23 inspection where there was a violation noted, you
24 would forward that information to the U.S. Attorney's
25 Office?

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(11:16-11:18)

1 **A. No. The procedure was, if a violation was**
2 **noted, I would provide a copy of that violation to the**
3 **owner or the custodian of records, whoever was**
4 **present, and they were given a week to rectify that,**
5 **and whatever their actions were were then noted. So**
6 **probably a week or two weeks later that report would**
7 **be sent to DOJ.**
8 Q. Right. But the report that would get sent to
9 DOJ would include the finding of the initial violation
10 as well as the correction by the person, correct?
11 **A. Yes.**
12 Q. Okay. So the U.S. -- the Department of
13 Justice would have the information about the initial
14 finding of a violation, correct?
15 **A. That's correct.**
16 Q. And it would be their decision, not yours, as
17 to whether to initiate a prosecution for that finding,
18 correct?
19 **A. That's correct.**
20 Q. Okay. And there were no minors found on this
21 one, I think, except that one that got cleared up?
22 **A. Yeah. There was controversy on this one and I**
23 **think it was because it was an ID using the Buddhist**
24 **calendar and the owners didn't know how to calculate**
25 **the actual date of birth. That's just from my**

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(11:18-11:19)

1 **recollection of this.**
2 Q. Well, let me help you there, Agent, because I
3 think you're thinking of another one.
4 **A. Okay.**
5 Q. And I don't want you to get confused.
6 **A. Okay.**
7 Q. If you go back to page 179, it looks like this
8 is not the Buddhist calendar one.
9 **A. Okay.**
10 Q. But you can't correct me if I'm wrong. Take a
11 quick look at that again.
12 **A. Okay. Okay.**
13 Q. Doesn't it appear to be that this was the one
14 where you had some question about the age of the
15 performer, but by a check of the DMV, you were able to
16 determine that her true date of birth was what was on
17 the photo identification?
18 **A. That's correct. That's what's listed here.**
19 Q. And she was of legal age?
20 **A. Yeah. That's what's listed here. That's**
21 **correct.**
22 Q. Okay. All right. Let's take a look at
23 Plaintiff's Exhibit 4 which is Serial 18.
24 All right. This appears to be an inspection that was
25 done --

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<p>(11:19-11:20) Page 113</p> <p>1 MS. WYER: Take a minute to look at it.</p> <p>2 THE WITNESS: Okay.</p> <p>3 Q. (By Mr. Murray) If you look at page 298,</p> <p>4 let's start there just so that --</p> <p>5 A. Okay.</p> <p>6 Q. -- we have a framework.</p> <p>7 That's your cover page. And by "you," I mean</p> <p>8 the cover page that was maintained by the FBI in</p> <p>9 connection with these inspections, correct?</p> <p>10 A. Yeah. This appears to be FBI cover page.</p> <p>11 Q. Okay. And we're only distinguishing that from</p> <p>12 some of the earlier pages that were provided because</p> <p>13 of the discovery in this lawsuit.</p> <p>14 A. Okay.</p> <p>15 Q. Okay. All right. So this is the record of an</p> <p>16 inspection done on 9/17/07 of ,</p> <p>17 formerly known as , correct?</p> <p>18 A. According to this, correct.</p> <p>19 Q. And, again, this is an inspection that</p> <p>20 occurred after July 27th of '06, which was the</p> <p>21 effective date of 2257 with certain amendments,</p> <p>22 correct?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. That's subsequent to Exhibit 39 that you</p> <p>25 showed me. So, yeah, it came after that date.</p>	<p>(11:22-11:24) Page 115</p> <p>1 Q. Okay. All right. So, if you look at page</p> <p>2 302, there's a determination that the</p> <p>3 had three 2257 violations, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And if you look at page 304, the first finding</p> <p>6 was that -- are you on 304 yet?</p> <p>7 A. Not yet.</p> <p>8 Q. Okay.</p> <p>9 A. Okay.</p> <p>10 Q. The first finding was that not every page on</p> <p>11 their website containing a sexually explicit conduct</p> <p>12 had the label that is required by 2257, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And I think we talked about it earlier that</p> <p>15 one of the requirements of the statute is that, on a</p> <p>16 website, you have to put the 2257 label identifying</p> <p>17 where the records are maintained and by whom on every</p> <p>18 page of the website where actual sexually explicit</p> <p>19 conduct is depicted, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And, so, in this case, even if they had</p> <p>22 the 2257 label on nine out of ten of -- 95 percent of</p> <p>23 every page, they would still be in violation for not</p> <p>24 having it on the remaining pages, correct?</p> <p>25 MS. WYER: Objection.</p>
<p>(11:20-11:21) Page 114</p> <p>1 Q. (By Mr. Murray) Yes.</p> <p>2 A. Okay.</p> <p>3 Q. All right. And this one was headed by Special</p> <p>4 Agent Lawrence; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And this one was conducted on 9/17/07 at the</p> <p>7 residence of , one of the owners and</p> <p>8 sole custodian of records for .</p> <p>9 correct?</p> <p>10 A. That's what's listed in the report. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. I wasn't present. So I have to go by what's</p> <p>13 in the report.</p> <p>14 Q. Right. But these were reports kept in the</p> <p>15 ordinary course of business made by people familiar</p> <p>16 with the facts and who recorded the facts at or near</p> <p>17 the time that they were recorded?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And the FBI relies on reports like this</p> <p>20 for their accuracy for investigative purposes,</p> <p>21 correct?</p> <p>22 A. Well, this is for inspection. So we're doing</p> <p>23 this --</p> <p>24 Q. For inspection?</p> <p>25 A. -- for inspection purposes, yes.</p>	<p>(11:24-11:25) Page 116</p> <p>1 A. I would have to review the law.</p> <p>2 Q. (By Mr. Murray) Okay. Go to page 306.</p> <p>3 Finding No. 3, do you see that on page 306?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Finding No. 3 was that the 2257 statement was</p> <p>6 not displayed for a sufficient duration in some of</p> <p>7 their depictions, correct?</p> <p>8 A. Yes.</p> <p>9 Q. For example, on one of them it was displayed</p> <p>10 for 4.5 seconds and another one for 3 seconds,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And that's a violation?</p> <p>14 MS. WYER: Objection.</p> <p>15 A. The statute states that it has to be displayed</p> <p>16 long enough to be read by the average viewer.</p> <p>17 Q. (By Mr. Murray) Okay. And how long is that?</p> <p>18 A. I would have to find the average viewer. I</p> <p>19 don't know.</p> <p>20 Q. But 4.5 seconds is not long enough for the</p> <p>21 average viewer apparently?</p> <p>22 A. I don't know how much material was contained</p> <p>23 in that 2257 statement. Normally it's the names, it's</p> <p>24 the address, maybe other information. I don't know.</p> <p>25 Q. Well, did you have any guidelines to go by in</p>

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<p style="text-align: right;">Page 117</p> <p>(11:25-11:26)</p> <p>1 terms of how long you expected the message to be 2 displayed?</p> <p>3 A. The only guideline is that provided by the 4 statute which is to be read by the average viewer. 5 And, again, I --</p> <p>6 Q. Well, how -- I'm sorry. I didn't mean to 7 interrupt you.</p> <p>8 A. Go ahead. I'm sorry.</p> <p>9 Q. So how would you go about ascertaining whether 10 there was a violation or not if you were looking at 11 that issue?</p> <p>12 A. If I were conducting an inspection and I'm 13 looking at the length of time that it was displayed, I 14 would probably see if I could read it and then I would 15 probably have some of the other inspectors read it and 16 see if they also were able to identify it and call it.</p> <p>17 Q. Okay. So the finding here was that, even 18 though they might have had a totally good and accurate 19 2257 statement, if it wasn't displayed long enough, 20 that's a violation?</p> <p>21 MS. WYER: Objection.</p> <p>22 A. I don't know how this inspection took place.</p> <p>23 Q. (By Mr. Murray) Right. But that's what this 24 statement is --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 119</p> <p>(11:28-11:29)</p> <p>1 identified himself and the purpose of the inspection 2 upon entering the residence of 3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then in paragraph four, it says that he 6 provided him with the letter that is similar to 7 Exhibit 34 that we've reviewed, correct?</p> <p>8 A. Correct.</p> <p>9 Q. That's a form letter, wasn't it --</p> <p>10 A. Yes, sir.</p> <p>11 Q. -- that you created? Okay.</p> <p>12 A. I didn't create it; but, yes, it's a form 13 letter.</p> <p>14 Q. Okay. And then it says, prior to the 15 inspection, digital photographs were taken of the 16 exterior of his residence, location of the records 17 storage, and the working area assigned to the 18 inspectors, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And it also says on page 317 copies were made 21 of the selected performers' identifications, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And the inspection concluded at 2:45, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And they took photographs before leaving,</p>
<p style="text-align: right;">Page 118</p> <p>(11:26-11:28)</p> <p>1 Q. -- attempting to explain?</p> <p>2 A. Well, yes. And the code is it has to be 3 displayed long enough to be read by the average 4 viewer.</p> <p>5 Q. Okay. And if it isn't, then, even though it 6 has all the information needed on it, it's still a 7 felony, correct?</p> <p>8 MS. WYER: Objection.</p> <p>9 A. If it's not displayed long enough to be read 10 by the average viewer, yes, it's a violation.</p> <p>11 Q. (By Mr. Murray) And it's a violation that 12 constitutes a felony?</p> <p>13 MS. WYER: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. (By Mr. Murray) Okay. Go to page 316, 16 please.</p> <p>17 A. Okay.</p> <p>18 Q. Again, this shows the pre-inspection 19 procedures followed. This is the same form that we've 20 seen so far in each one, correct, this page?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. And it says here that the inspection 23 began at 11:15 a.m., correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that Special Agent Lawrence immediately</p>	<p style="text-align: right;">Page 120</p> <p>(11:29-11:31)</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And, so, there were five or six Government 4 agents in this residence between -- for three and a 5 half hours approximately according to this report, 6 correct?</p> <p>7 A. There would not have been five or six. Let me 8 back up just one second. 9 For the Florida inspections, they would have 10 had -- the teams were halved. So he would have either 11 two or three inspectors with him. So it would have 12 been three or four people.</p> <p>13 Q. Okay. Yes, because this inspection -- I'm 14 glad you reminded me. This inspection actually 15 occurred in Miami, Florida, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So far, the ones that we've talked about were 18 inspections done in California; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. So, by September of '07, you had 21 expanded to also doing some inspections in the state 22 of Florida?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. Well, the companies were randomly selected. 25 The initial companies that were selected were all</p>

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<p style="text-align: right;">Page 121</p> <p>(11:31-11:33)</p> <p>1 located in California. Once there had been companies</p> <p>2 randomly selected that were in Florida, we grouped</p> <p>3 them together and then used -- did those inspections</p> <p>4 all at one time.</p> <p>5 Q. Okay. But, again, they were done by the same</p> <p>6 team, only the team was cut in half?</p> <p>7 A. That's correct.</p> <p>8 Q. But you're not talking about different people?</p> <p>9 A. No. It's the same people that were identified</p> <p>10 earlier.</p> <p>11 Q. So, in this case, there would have been two or</p> <p>12 three agents in this residence for three and a half</p> <p>13 hours?</p> <p>14 A. It would have been three or four.</p> <p>15 Q. Okay. Is there any indication that you found</p> <p>16 here that advance notice had been given to the owner</p> <p>17 of that residence? Did you see anything to that</p> <p>18 effect?</p> <p>19 MS. WYER: Objection. Have you had a</p> <p>20 chance to review it?</p> <p>21 THE WITNESS: I haven't.</p> <p>22 A. I don't see any reference to giving advanced</p> <p>23 notice.</p> <p>24 Q. (By Mr. Murray) Now turn to page 334, the</p> <p>25 photo log.</p>	<p style="text-align: right;">Page 123</p> <p>(11:34-11:35)</p> <p>1 A. Correct.</p> <p>2 Q. And the next page is a photo of, again, a file</p> <p>3 cabinet, correct, with records in it?</p> <p>4 A. Yes, sir.</p> <p>5 Q. As is the next page, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And the next page looks to be the dining room</p> <p>8 of this residence, doesn't it?</p> <p>9 A. That's what it looks like.</p> <p>10 Q. And that's true of the next picture as well,</p> <p>11 correct?</p> <p>12 A. Yes, sir. There's your title page, just out</p> <p>13 of order.</p> <p>14 Q. Ah. Yes.</p> <p>15 Now, these photos, it is true, is it not,</p> <p>16 that, absent 2257 and absent exigent circumstances and</p> <p>17 absent voluntary consent, the FBI would need a search</p> <p>18 warrant and probable cause to get a search warrant</p> <p>19 before it could enter the residence depicted in these</p> <p>20 photos, correct?</p> <p>21 MS. WYER: Objection. Lack of foundation</p> <p>22 and calls for speculation.</p> <p>23 A. Absent the 2257 inspections and if conducting</p> <p>24 a criminal investigation in search of evidence, yes,</p> <p>25 they would need probable cause and a search warrant to</p>
<p style="text-align: right;">Page 122</p> <p>(11:33-11:34)</p> <p>1 A. Okay.</p> <p>2 Q. What is this -- I saw this in a couple others.</p> <p>3 The first thing that is usually described is "title</p> <p>4 page."</p> <p>5 A. Uh-huh.</p> <p>6 Q. Was a picture taken of the title page? What</p> <p>7 does that mean?</p> <p>8 A. It's missing in this one. The title page --</p> <p>9 you can see it in the others.</p> <p>10 Q. Yeah.</p> <p>11 A. The title page would just include the name of</p> <p>12 the company being inspected and the date of the</p> <p>13 inspection.</p> <p>14 Q. But how would that be created? Is that a</p> <p>15 picture of a sign or what is a picture of that?</p> <p>16 A. Yeah. That's just generated and then place it</p> <p>17 on the floor and take a photograph of it.</p> <p>18 Q. Okay. So that's not something that's at the</p> <p>19 premises?</p> <p>20 A. Oh, no, no, no. That's just something we did</p> <p>21 so that we can differentiate the photos.</p> <p>22 Q. I got you. Okay. All right.</p> <p>23 So, then, if you look at page 335, you see</p> <p>24 that that's a photo of the front of the residence that</p> <p>25 was the subject of this inspection, correct?</p>	<p style="text-align: right;">Page 124</p> <p>(11:35-11:38)</p> <p>1 enter.</p> <p>2 Q. And they would need probable cause and a</p> <p>3 search warrant in that same scenario to search -- to</p> <p>4 inspect or examine the file cabinets and the records</p> <p>5 contained in those file cabinets depicted on these</p> <p>6 pictures?</p> <p>7 MS. WYER: Same objection.</p> <p>8 A. In the same scenario, yes.</p> <p>9 Q. (By Mr. Murray) Okay. Now, in this</p> <p>10 particular person, again, there were some violations</p> <p>11 noted; is that correct?</p> <p>12 A. Yes. And this would include -- on page 306,</p> <p>13 No. 3, again, was the 2257 statement was not displayed</p> <p>14 for a sufficient period of time?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Let's take a look at Plaintiff's</p> <p>17 Exhibit 5 which is I 13. This was an</p> <p>18 inspection done of /</p> <p>19 , on August 16, 2006, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Again, after the July 27th, 2006 effective</p> <p>22 date of the most recent amendment to 2257, correct, as</p> <p>23 depicted in Plaintiff's Exhibit 39?</p> <p>24 A. Correct.</p> <p>25 MS. WYER: Objection; misleading.</p>

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(11:38-11:40)

1 Q. (By Mr. Murray) And this was one that you did
2 if you look at page 408?
3 **A. Yes.**
4 Q. Okay. And one of the owners was present
5 during this inspection?
6 **A. Yes.**
7 Q. And you report that the owner of the business,
8 provided a copy of court records dated in 2004
9 which indicated that [REDACTED] had purchased
10 product from [REDACTED] and [REDACTED] and that
11 [REDACTED] and [REDACTED] had gone out of
12 business and that [REDACTED] had successfully bid
13 on the products those companies had in stock, correct?
14 She told you that according to your report?
15 **A. According to the report, yes.**
16 Q. And according to the report, you explained to
17 her that [REDACTED], then had the
18 responsibility to maintain proper 2257 information
19 upon the receipt and ownership of these films that
20 belonged to [REDACTED], correct?
21 **A. Correct.**
22 Q. And she didn't have the 2257 records for the
23 videos that she had bid on, correct?
24 **A. From reading this, I don't know if it's the**
25 **same videos that she had bid upon or not, but she had**

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(11:40-11:41)

1 **2257 violations.**
2 Q. Okay. So she had several 2257 violations I
3 think you indicated in your report, did she not?
4 **A. Yes.**
5 Q. Now, if you would look at page 433, which
6 shows your report of inspection procedures, you began
7 at 9:30 in the morning, correct?
8 **A. Correct.**
9 Q. You took the photographs of the business in
10 the room where they had their 2257 records, correct?
11 **A. Correct.**
12 Q. You made copies of the records that you
13 examined, correct?
14 **A. Correct.**
15 Q. And you took photographs before you left?
16 **A. Correct.**
17 Q. And you stayed there until about 3:00 in the
18 afternoon?
19 **A. That's correct.**
20 Q. So that inspection took approximately five and
21 a half hours; is that correct?
22 **A. Yes, sir.**
23 Q. And where were they located again? Were they
24 in Florida or in -- oh, they're in California.
25 They're in Van Nuys.

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(11:41-11:43)

1 **A. Yes.**
2 Q. Now let's go to the photos beginning on page
3 459. That's a photograph of the building that the
4 business was located in?
5 **A. Yes.**
6 Q. And the next page shows the entrance to the
7 business premises?
8 **A. That's correct.**
9 Q. Now, the next page shows an office, does it
10 not, or some kind of an area within the business?
11 **A. Yes.**
12 Q. And then the next page shows a hallway within
13 the confines of the business premises?
14 **A. Yes.**
15 Q. The next picture is difficult to make out.
16 **A. According to the photo log, it says same**
17 **hallway.**
18 Q. Right. And then the next picture is supposed
19 to be what?
20 **A. Entryway to 2257 workroom.**
21 Q. Okay. And then the next picture would be the
22 2257 storage area where they keep the records?
23 **A. The photo log just lists it as a workroom.**
24 Q. Okay. And that workroom consists of some
25 shelving type cabinets, correct?

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(11:43-11:45)

1 **A. Correct.**
2 Q. With what appears to be various binders of
3 records?
4 **A. I can't tell what it is; but, yes, it could be**
5 **binders.**
6 Q. And there are boxes on the right side?
7 **MS. WYER:** Could you specify what
8 photograph you're looking at?
9 **MR. MURRAY:** Yeah, 465.
10 **A. Yes.**
11 Q. (By Mr. Murray) Okay. And then if you look
12 at page 466, it's easier to see that these are, in
13 fact, binders of records, correct?
14 **A. I don't know what's contained in them, but it**
15 **looks like binders.**
16 Q. Binders with some contents in them?
17 **A. I can't see that.**
18 Q. Okay. And then the next --
19 **A. But I'm sure it does.**
20 Q. And then the next picture is what? I see a
21 filing cabinet. Do you not see that with the drawer
22 open?
23 **A. Yes.**
24 Q. And then the next picture is -- do you know
25 who that person is sitting behind that desk?

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<p style="text-align: right;">Page 129</p> <p>(11:45-11:46)</p> <p>1 A. Yes.</p> <p>2 Q. Who is that?</p> <p>3 A. That's</p> <p>4 Q. He's one of the Government agents?</p> <p>5 A. He is one of the independent contractors.</p> <p>6 Q. And he's sitting behind a desk and in front of</p> <p>7 him it looks like there's some kind of machinery on a</p> <p>8 table?</p> <p>9 A. That's probably the copier that we brought</p> <p>10 with us.</p> <p>11 Q. And the next two pictures are, again, of that</p> <p>12 area where he's sitting behind that desk?</p> <p>13 A. Yes.</p> <p>14 Q. Now, it is true, is it not -- again, let's</p> <p>15 make sure that we're on the same page.</p> <p>16 Absent 2257, absent exigent circumstances,</p> <p>17 absent voluntary consent, if the FBI on official</p> <p>18 business wanted to gain entrance to the areas depicted</p> <p>19 in the photos beginning on page 461 and ending on</p> <p>20 469 -- I'm sorry -- 470, the FBI would have to get a</p> <p>21 search warrant, correct?</p> <p>22 MS. WYER: Objection. Assumes facts not</p> <p>23 in evidence; lack of foundation; calls for</p> <p>24 speculation.</p> <p>25 A. To save time, instead of doing this for each</p>	<p style="text-align: right;">Page 131</p> <p>(11:47-11:49)</p> <p>1 yes, it would require probable cause and a warrant.</p> <p>2 Q. Thank you.</p> <p>3 Okay. Let's go to No. 6 which is</p> <p>4 18. All right. On page 546, this indicates that it</p> <p>5 was an inspection done of --</p> <p>6 MS. WYER: Could he have a chance to look</p> <p>7 at it? Are you ready?</p> <p>8 MR. MURRAY: I was just going to ask him</p> <p>9 about the title page.</p> <p>10 THE WITNESS: Uh-huh. Yeah. 546.</p> <p>11 MS. WYER: Okay. If you're ready.</p> <p>12 Q. (By Mr. Murray) Are you ready?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. This was an inspection done of</p> <p>15 in San Diego, California on March 27, 2007,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Again, after the July 27, 2006 effective date</p> <p>19 of 2257 in Plaintiff's Exhibit 39?</p> <p>20 MS. WYER: Objection; misleading.</p> <p>21 A. That's correct.</p> <p>22 Q. (By Mr. Murray) All right. And this one was</p> <p>23 done by Agent Lawrence as the lead, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And the owner -- according to his report, the</p>
<p style="text-align: right;">Page 130</p> <p>(11:46-11:47)</p> <p>1 one, can we just say "blanket"? Can we do that?</p> <p>2 Q. Yes.</p> <p>3 A. But yes.</p> <p>4 Q. You agree with that? With all the -- look,</p> <p>5 let's stipulate that each time I ask this question,</p> <p>6 even if I forget to include one of the qualifications,</p> <p>7 all the qualifications that were in the previous</p> <p>8 questions: absent exigent circumstances, absent</p> <p>9 voluntary consent, absent 2257 authority, an official</p> <p>10 visit by the FBI on a criminal investigation, to enter</p> <p>11 these areas, you would need a search warrant, correct?</p> <p>12 MS. WYER: Objection. I'll make the same</p> <p>13 standing objection.</p> <p>14 A. If we can agree that your question remains the</p> <p>15 same and my answer remains the same for all of these.</p> <p>16 Q. (By Mr. Murray) Yes, but I need your answer.</p> <p>17 A. Yes.</p> <p>18 Q. Your answer is yes?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And the same would be true with respect</p> <p>21 to examining the records that were contained within</p> <p>22 those premises?</p> <p>23 A. Absent a 2257 inspection, on official</p> <p>24 business, if an agent wanted to look at those records</p> <p>25 for a criminal investigation in search of evidence,</p>	<p style="text-align: right;">Page 132</p> <p>(11:49-11:50)</p> <p>1 owner was present throughout the inspection?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. The inspection summary is a little bit</p> <p>4 different on this one because, if you look at the</p> <p>5 second to last paragraph, it indicates that --</p> <p>6 MS. WYER: Could he have a chance to read</p> <p>7 the whole thing first?</p> <p>8 MR. MURRAY: Well, I was going to read it</p> <p>9 to him, but okay.</p> <p>10 A. (Reading)</p> <p>11 Okay.</p> <p>12 Q. (By Mr. Murray) So, in this one, according to</p> <p>13 Agent Lawrence's report, in the second to last</p> <p>14 paragraph on page 549, he indicates that their website</p> <p>15 purports that its movies contain surreptitious</p> <p>16 recordings made in locker rooms and showers on actual</p> <p>17 military bases which may be a violation of 18 USC</p> <p>18 Section 1801, Video Voyeurism Prevention Act, 18 USC</p> <p>19 Section 2511, which is the wiretapping statute; is</p> <p>20 that correct? That's what he writes in his report?</p> <p>21 A. That's what's listed. Yes.</p> <p>22 Q. Okay. And then in the last paragraph, it does</p> <p>23 state, though, that during the inspection the</p> <p>24 inspectors observed a studio containing a locker room</p> <p>25 and showers that had been built in the back of /</p>

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(11:50-11:52)

1 . offices. This studio accounted for some
2 but not all of the scenes contained in .
3 website; is that correct?
4 **A. That's correct.**
5 Q. And then on the next page he also writes that
6 the producer advised that approximately 90 percent of
7 the performers appearing in the movies are active
8 military personnel from a certain station, correct?
9 **A. Correct.**
10 Q. And Agent Lawrence reports that, "Consultation
11 with personnel from the United States Naval Criminal
12 Investigative Services determined that such actions by
13 active military personnel would be a violation of the
14 Uniform Code of Military Justice. Liaison with NCIS
15 personnel regarding this and possible surreptitious
16 recording on military bases is continuing." Is that
17 correct?
18 **A. That's what it states.**
19 Q. So, at least in this inspection, there is a
20 report that would indicate a potential investigation
21 of potential violations of other criminal statutes,
22 correct?
23 **A. Yes, sir.**
24 Q. Now, it was determined that they had seven
25 violations of 2257, correct?

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(11:52-11:53)

1 **A. That's what the report says. Yes.**
2 Q. If you look at page 552, one of the
3 violations, No. 3, is that the producer does not
4 maintain at least 20 normal business hours per week
5 and normal business hours were not posted; is that
6 correct?
7 **A. That's correct.**
8 Q. So this goes back to -- remember, we were
9 talking earlier about the fact that, if you don't have
10 normal business hours of at least 20 hours a week,
11 you've got to give a notice to somebody of which hours
12 you're going to be there, correct?
13 **A. Correct.**
14 Q. And according to Agent Lawrence's report, this
15 particular person didn't keep 20 normal business hours
16 and didn't give the proper notice, correct?
17 **A. That's what the report states. Correct.**
18 Q. And that's a violation?
19 **A. That's correct.**
20 **MS. WYER: Objection.**
21 Q. (By Mr. Murray) And, again, here we've got
22 this no cross-reference system again, No. 4, on this
23 one, correct?
24 **A. Yes.**
25 Q. Okay. Now let's take a look at the photos to

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(11:53-11:55)

1 see where these inspections occurred. The photo log,
2 Agent Joyner, is on page 588.
3 **A. Okay.**
4 Q. According to this photo log, there was the
5 title page, which is standard, correct?
6 **A. Yes, sir.**
7 Q. And then the building front and then the
8 building front door, correct?
9 **A. Yes.**
10 Q. I'm just looking at the log.
11 **A. Okay.**
12 Q. Then it says "2257 records, red binder on
13 table." And then it has all these pictures of the
14 studio lockers, studio medical exam room, studio
15 lockers and storage area. What is the justification
16 for taking those pictures?
17 **MS. WYER: Objection.**
18 **A. I wasn't present. So I couldn't answer that.**
19 Q. (By Mr. Murray) Well, can you think of any
20 justification for taking those photos?
21 **MS. WYER: Objection. Calls for**
22 **speculation.**
23 **A. I wasn't present.**
24 Q. (By Mr. Murray) Well, does your understanding
25 of the statute regulations authorize you to enter

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(11:55-11:56)

1 other areas besides the area that you need to enter to
2 examine the 2257 records?
3 **A. If you see -- it goes back to the plain view**
4 **doctrine or there's indications of other criminal**
5 **activity. I don't know if the owner granted access.**
6 **I don't know if the owner provided a tour of the**
7 **building. I don't know any of these things. I can't**
8 **answer.**
9 Q. Okay. All right. Take a look, then, at page
10 592. That's an area with -- it's got a table, does it
11 not, and some records on it?
12 **A. Yes, sir.**
13 Q. Most of these photos are hard to make out.
14 These are some of the worst ones. But 599 shows this
15 locker room area, correct?
16 **A. Yeah. I see lockers.**
17 Q. The next one that seems to be somewhat legible
18 is on 609 -- 602, I should say.
19 **A. Okay.**
20 Q. And that appears to be some boxes with
21 whatever contents are in them, correct?
22 **A. Correct.**
23 Q. A table of some kind and a chair?
24 **A. Correct.**
25 Q. The next one appears to be a bathroom?

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<p>(11:56-11:58) Page 137</p> <p>1 A. Yes, a series of sinks.</p> <p>2 Q. If you look at page 605, again, it's a little</p> <p>3 better picture of this office area that has a desk,</p> <p>4 correct?</p> <p>5 A. It looks like a table and a chair.</p> <p>6 Q. With a bunch of papers strewn, you know, on</p> <p>7 that table, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Like a bulletin board type thing on the wall?</p> <p>10 A. Yes.</p> <p>11 Q. Some shelving on the left side of this with</p> <p>12 some other papers and objects?</p> <p>13 A. Yes.</p> <p>14 Q. File cabinets on the right side of this?</p> <p>15 A. I guess that's a file cabinet. Yes.</p> <p>16 Q. It looks like there's even some type of</p> <p>17 artwork at the top. I can't make out what it is, but</p> <p>18 it looks like picture frames, doesn't it, on the wall?</p> <p>19 A. Oh, on the wall? Yes.</p> <p>20 Q. This area is an area that the FBI could not</p> <p>21 enter without a search warrant unless they had exigent</p> <p>22 circumstances or voluntary consent --</p> <p>23 A. I thought we were going to stipulate --</p> <p>24 Q. -- in the absence of 2257 with all those same</p> <p>25 qualifications?</p>	<p>(12:00-12:01) Page 139</p> <p>1 A. Correct.</p> <p>2 Q. And we know from the report that there were</p> <p>3 these locker areas inside the building?</p> <p>4 A. That's correct.</p> <p>5 Q. But are you saying that looking at what is</p> <p>6 depicted -- well, okay. If you look at the photo log,</p> <p>7 the fourth picture is described as "2257 records, red</p> <p>8 binder on table." Do you see that description in the</p> <p>9 photo log?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And if you look at that photo on page</p> <p>12 592, do you see the binder on the table?</p> <p>13 A. Yes.</p> <p>14 Q. And is it your testimony that you can't tell</p> <p>15 from this picture and from that description that this</p> <p>16 is business premises and an area of the business</p> <p>17 premises that is not open to the general public? Is</p> <p>18 that your testimony?</p> <p>19 A. I can assume that, but I don't know that</p> <p>20 because I wasn't there. So I have no idea where this</p> <p>21 was located.</p> <p>22 Q. From the picture, what is your belief?</p> <p>23 A. What is my assumption?</p> <p>24 Q. Yes.</p> <p>25 A. My assumption is that it would be that it's in</p>
<p>(11:58-12:00) Page 138</p> <p>1 A. I thought we were going to stipulate to all</p> <p>2 this?</p> <p>3 MS. WYER: Objection. Assumes facts not</p> <p>4 in evidence, including that these are private areas.</p> <p>5 Calls for speculation and lack of foundation.</p> <p>6 A. If this were a private area in a private</p> <p>7 business, absent the situations that you mentioned, if</p> <p>8 it were a criminal investigation, an agent looking for</p> <p>9 evidence of a crime would require probable cause and a</p> <p>10 warrant.</p> <p>11 Q. (By Mr. Murray) Well, are you saying this is</p> <p>12 not a -- this is not an area of -- a private area of</p> <p>13 the premises -- of this business premises, this</p> <p>14 photograph?</p> <p>15 A. I don't know. I wasn't there for the</p> <p>16 inspection.</p> <p>17 Q. This was an inspection of business premises of</p> <p>18 . wasn't it, according to the report on</p> <p>19 page 549?</p> <p>20 A. According to the report, yes.</p> <p>21 Q. And, in fact, the photographs show the outside</p> <p>22 of the business premises?</p> <p>23 A. That's what's listed in the photo log.</p> <p>24 Q. Okay. And if you look at page 590 and 591, it</p> <p>25 appears to be the outside of a building.</p>	<p>(12:01-12:03) Page 140</p> <p>1 the business.</p> <p>2 Q. In a private area in the business as opposed</p> <p>3 to John Doe just walking in and wandering around</p> <p>4 there, correct?</p> <p>5 A. I don't know if this is a general office area,</p> <p>6 if this is a reception area. I don't know. And the</p> <p>7 photograph is certainly not clear enough for me to</p> <p>8 determine that.</p> <p>9 Q. And what about the locker area? Based on the</p> <p>10 report and the description, that's not -- that's a</p> <p>11 private part of this business premises, isn't it?</p> <p>12 MS. WYER: Objection; mischaracterizing.</p> <p>13 A. Again, I wasn't there. So my assumption is</p> <p>14 that it would be, but I wasn't there.</p> <p>15 Q. (By Mr. Murray) Based on your best</p> <p>16 information by looking at these reports, you would</p> <p>17 agree, would you not, that with all the qualifications</p> <p>18 in my prior questions, the FBI would need a search</p> <p>19 warrant ordinarily to enter those areas -- those</p> <p>20 premises and those areas within that business?</p> <p>21 MS. WYER: Objection. Assumes facts not</p> <p>22 in evidence; lack of foundation; calls for</p> <p>23 speculation.</p> <p>24 A. With all the caveats that you provided and</p> <p>25 with the assumption that all these areas are within a</p>

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<p style="text-align: right;">Page 141</p> <p>(12:03-12:05)</p> <p>1 private area of the business, yes.</p> <p>2 Q. (By Mr. Murray) And, certainly, to examine</p> <p>3 the records kept on those business premises, with all</p> <p>4 the qualifications, the FBI would need a search</p> <p>5 warrant, correct?</p> <p>6 MS. WYER: Objection. Same objection.</p> <p>7 A. Again, absent 2257 and if it were a criminal</p> <p>8 investigation in search of evidence, yes, the agent</p> <p>9 would need probable cause and a search warrant.</p> <p>10 Q. (By Mr. Murray) No. 7, Plaintiff's Exhibit 7,</p> <p>11 which is Authentic. I think I will give you the</p> <p>12 supplement. Yes. I also want to show you -- well,</p> <p>13 I'm going to show you Plaintiff's Exhibit 7 and then</p> <p>14 I'm going to also show you Plaintiff's Exhibit 30</p> <p>15 because this was a supplement provided to Plaintiff's</p> <p>16 Exhibit 7, which I think is the rest of the report,</p> <p>17 but we'll establish that in a minute once you've had a</p> <p>18 chance to look at it.</p> <p>19 MS. WYER: Do you want to take a break?</p> <p>20 MR. SAMONDS: I'm just going to take a</p> <p>21 quick restroom break.</p> <p>22 MR. MURRAY: I mean, we can break.</p> <p>23 THE WITNESS: Do you want to break for</p> <p>24 lunch?</p> <p>25 MR. MURRAY: The agent says he likes to</p>	<p style="text-align: right;">Page 143</p> <p>(12:49-12:51)</p> <p>1 Q. Okay.</p> <p>2 MS. WYER: Objection; misleading.</p> <p>3 A. We haven't reviewed any of the inspections</p> <p>4 before that date. Correct.</p> <p>5 Q. (By Mr. Murray) Yeah. Okay. All right. If</p> <p>6 you turn to page 661, the report date on this -- this</p> <p>7 was Special Agent Lawrence who wrote this report,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And he reported on January 14, 2008?</p> <p>11 A. Correct.</p> <p>12 Q. Although the inspection was conducted on</p> <p>13 August 22, '07, correct?</p> <p>14 A. That's what's listed. Yes.</p> <p>15 Q. Okay. And if you look at the -- and the owner</p> <p>16 was present throughout the inspection, correct,</p> <p>17 according to his report?</p> <p>18 A. I sold [redacted] and</p> <p>19 was the one that was present.</p> <p>20 Q. Yes. Okay. In fact, he might have been the</p> <p>21 former owner, but the point is the principal involved</p> <p>22 in whatever entity was being inspected was there?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And if you look at page 663, the</p> <p>25 inspection procedures, that inspection began at 12:40</p>
<p style="text-align: right;">Page 142</p> <p>(12:05-12:49)</p> <p>1 eat lunch.</p> <p>2 THE WITNESS: Is there something close by</p> <p>3 that's fast? I can just grab a sandwich or something.</p> <p>4 That will be fine.</p> <p>5 MR. MURRAY: Let's go off the record.</p> <p>6 (Lunch recess)</p> <p>7 Q. (By Mr. Murray) All right. Agent Joyner, I</p> <p>8 put in front of you when we left for lunch Plaintiff's</p> <p>9 Exhibit 7 as well as 30, I think.</p> <p>10 A. Yes, sir.</p> <p>11 Q. I think when you combine the two of them that</p> <p>12 constitutes the inspection report for an entity known</p> <p>13 as [redacted] dealing first with Plaintiff's</p> <p>14 Exhibit 7, would you turn to page 659 which is the</p> <p>15 title page?</p> <p>16 A. Okay.</p> <p>17 Q. And this was an inspection done of [redacted]</p> <p>18 also known as [redacted] in</p> <p>19 San Clemente, California on August 22, 2007; is that</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So far, you would agree with me we haven't</p> <p>23 come across any inspections that occurred prior to</p> <p>24 July 27th, '06?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 144</p> <p>(12:51-12:52)</p> <p>1 p.m.; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And the agent identified himself and the</p> <p>4 purpose of the inspection upon entering the residence</p> <p>5 of this individual, correct?</p> <p>6 A. That's correct.</p> <p>7 MS. WYER: According to the document.</p> <p>8 A. Yes.</p> <p>9 Q. (By Mr. Murray) So this was an -- this is the</p> <p>10 second inspection that occurred at a residence,</p> <p>11 correct --</p> <p>12 MS. WYER: Objection.</p> <p>13 Q. -- that we've encountered. We had one other</p> <p>14 previous.</p> <p>15 A. Of the ones that we reviewed so far?</p> <p>16 Q. So far, yes.</p> <p>17 A. Yes. Correct.</p> <p>18 Q. Okay. Special Agent Lawrence provided the</p> <p>19 letter that we've talked about before that was a</p> <p>20 temp -- you know, a prototype letter that you used</p> <p>21 whenever you did these inspections, correct?</p> <p>22 A. That's what's listed in the report. Yes. And</p> <p>23 I wasn't present during this report.</p> <p>24 Q. Right. But the letter --</p> <p>25 A. That's what the report says.</p>

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<p style="text-align: right;">Page 145</p> <p>(12:52-12:53)</p> <p>1 Q. And I think that we -- pull out 34. Let's</p> <p>2 make sure we've got all these letters accounted for.</p> <p>3 If you would go back to Exhibit 34. Oh, here it is.</p> <p>4 Okay.</p> <p>5 A. Okay.</p> <p>6 Q. Exhibit 34 was the letter that you signed,</p> <p>7 correct, that we talked about before?</p> <p>8 A. That's correct.</p> <p>9 Q. And I think I gave you 32. Do you have that,</p> <p>10 the original? Did I give Ms. Wyer 32?</p> <p>11 MS. WYER: I don't know. I didn't know</p> <p>12 this was the original.</p> <p>13 MR. MURRAY: Yeah. Because I gave that</p> <p>14 to you because I thought it was going to be the same.</p> <p>15 MS. WYER: I thought he had made copies.</p> <p>16 MR. SAMONDS: I made copies of the two</p> <p>17 that you gave to me.</p> <p>18 MR. MURRAY: And did you give me back</p> <p>19 the -- I don't think you gave them back to me though.</p> <p>20 MR. SAMONDS: Yes. I gave her the two</p> <p>21 copies and you the two copies.</p> <p>22 MR. MURRAY: Ah. Okay.</p> <p>23 Q. (By Mr. Murray) I'm showing you what's been</p> <p>24 marked as Plaintiff's Exhibit 32. This is a letter</p> <p>25 sent to . it not, or addressed to I</p>	<p style="text-align: right;">Page 147</p> <p>(12:55-12:56)</p> <p>1 company. Just a little bit different wording.</p> <p>2 Q. Okay.</p> <p>3 A. But the meaning is the same.</p> <p>4 Q. All right. Now, getting back to Plaintiff's</p> <p>5 Exhibit 7. So Agent Lawrence provided this individual</p> <p>6 with that type of a letter that we've been talking</p> <p>7 about, correct?</p> <p>8 MS. WYER: According to the report.</p> <p>9 A. Yes. Correct.</p> <p>10 MR. MURRAY: Is that an objection or are</p> <p>11 you adding something to my question?</p> <p>12 MS. WYER: Are you asking whether he has</p> <p>13 personal knowledge?</p> <p>14 MR. MURRAY: No. I'm asking you whether</p> <p>15 you're trying to add to my question which I think is</p> <p>16 improper. If you'll make an objection, I'll be glad</p> <p>17 to take it into account in determining whether I</p> <p>18 should rephrase the question, but I don't think you</p> <p>19 should be adding something to my question is what I'm</p> <p>20 saying.</p> <p>21 A. As I mentioned, I wasn't present. So all of</p> <p>22 my answers are based upon the report --</p> <p>23 Q. (By Mr. Murray) Of course.</p> <p>24 A. -- prepared by Steve Lawrence.</p> <p>25 Q. Of course. All right. And, again, the same</p>
<p style="text-align: right;">Page 146</p> <p>(12:53-12:55)</p> <p>1 should say?</p> <p>2 A. Yes. Correct.</p> <p>3 Q. And that's signed by Agent Lawrence?</p> <p>4 A. That's correct.</p> <p>5 Q. But it's the same letter that you wrote and</p> <p>6 signed which is Plaintiff's Exhibit 34, correct?</p> <p>7 A. I don't know who originally drafted the</p> <p>8 letter, but it's the same letter that we disseminated</p> <p>9 at the beginning of the inspection.</p> <p>10 Q. Right.</p> <p>11 A. I think it was drafted by OGC. I'm not sure.</p> <p>12 Q. And "OGC" stands for?</p> <p>13 A. Office of General Counsel with the FBI.</p> <p>14 Q. Okay. And then Plaintiff's Exhibit 33 is</p> <p>15 another letter. This one bears your name; is that</p> <p>16 correct? And that's addressed to whom?</p> <p>17 A.</p> <p>18 Q. And, again, that's the same -- the content is</p> <p>19 the same as the other letters, correct?</p> <p>20 A. They're not identical, but they're the same</p> <p>21 message.</p> <p>22 Q. Is there something -- show me what's different</p> <p>23 about the two.</p> <p>24 A. It says, "If any violations of 18 USC. If no</p> <p>25 violations are discovered." Then it lists the</p>	<p style="text-align: right;">Page 148</p> <p>(12:56-12:57)</p> <p>1 protocol, according to this document, was filed and</p> <p>2 prior to the inspection digital photographs were taken</p> <p>3 of residence and the working area assigned</p> <p>4 to the inspectors, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And copies -- if you go to the next page,</p> <p>7 copies of the examined records were made and taken off</p> <p>8 the premises, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And then photographs were taken of the area</p> <p>11 used by the inspection team before departing, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And the inspection ended at 2:30 p.m.</p> <p>14 according to the report?</p> <p>15 A. That's correct.</p> <p>16 Q. So that inspection was about just under three</p> <p>17 hours? I'm sorry. A little over two hours, I should</p> <p>18 say?</p> <p>19 A. A little over two, yes.</p> <p>20 Q. Okay. Now, unfortunately, I don't think we</p> <p>21 have any of the photos. I don't know where they are,</p> <p>22 but see if you can find any of the photos in</p> <p>23 Plaintiff's Exhibit 30, which is the supplement to</p> <p>24 this.</p> <p>25 A. There's the photo log and the title but no</p>

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(12:57-12:59)

1 **other photos.**

2 Q. (By Mr. Murray) We would request that those

3 be provided, and we do need legible copies of the

4 photos. If those can't be done, we would like an

5 opportunity to look at the originals at some point,

6 but I don't think we were -- now, I will say this.

7 There is one other supplemental picture. See if you

8 can -- but I don't think that was one of them. I'm

9 going to show you Plaintiff's Exhibit 31, and let me

10 know if you can find -- I don't think they're in

11 there, but see if you can locate the photographs for

12 . . . I think they're for a couple of other

13 places.

14 **MR. MURRAY:** Do you have them? Can I see

15 those? Is that the photo?

16 **MS. WYER:** These are just a copy of that.

17 **MR. MURRAY:** Oh, okay.

18 **A. Unless it has a title page, I wouldn't**

19 **recognize --**

20 Q. (By Mr. Murray) All right. Well, then let's

21 just move on.

22 **A. Okay.**

23 Q. I didn't see it in there either.

24 Okay. Let's go to Plaintiff's Exhibit 8.

25 **A. Can I put these aside now?**

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(12:59-13:00)

1 Q. Yes.

2 **A. Okay.**

3 Q. Yes. You can put those aside for the moment.

4 **MS. WYER:** What is 8?

5 **MR. MURRAY:** Candid Serial 20.

6 Q. (By Mr. Murray) And if you turn to page 670

7 of the title page, this was an report of an inspection

8 done at (on September 18, 2007,

9 correct?

10 **A. That's correct.**

11 Q. And if you go to page 673, you will see that

12 you are the author of the Regulatory Inspections

13 Report, correct?

14 **A. That's correct.**

15 Q. And that the date of your report is October

16 16, 2007; whereas, the date of the inspection was

17 September 18, 2007; is that correct?

18 **A. That's correct.**

19 Q. And the inspection was conducted at the

20 business premises of that entity in St. Petersburg,

21 Florida, correct?

22 **MS. WYER:** Do you need a minute to read

23 it?

24 **A. That's correct.**

25 Q. (By Mr. Murray) And the owner of the entity

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(13:00-13:02)

1 was present during the inspection?

2 **A. That's correct.**

3 Q. Okay. There were several 2257 findings of

4 violations, correct, according to the second to last

5 paragraph?

6 **A. That's correct.**

7 Q. And, for example, on page 675, the first

8 finding was that they used a post office box rather

9 than a physical address as the location of the records

10 for certain titles?

11 **A. That's correct.**

12 Q. And at that time, you had to actually list the

13 physical address under the regulations? You couldn't

14 identify a post office box address?

15 **A. That's correct.**

16 **MS. WYER:** Objection.

17 Q. (By Mr. Murray) They had a cross-reference

18 system, but it wasn't updated. That was another

19 problem; is that correct? No. 3.

20 **A. That's correct.**

21 Q. No. 2, the problem was a production date is

22 listed on the DVD jacket, but no production date is

23 included in the movie for the following titles; is

24 that correct?

25 **A. That's correct.**

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(13:02-13:03)

1 Q. So what you're saying there or what you were

2 finding there is that, under the regulations, it's not

3 enough to list the production date of the DVD in this

4 case on the jacket of the DVD? It's actually got to

5 be some place in the movie?

6 **A. I'd have to refer back to the regulations.**

7 Q. Well, you say --

8 **A. But that's what it's showing here. Yes.**

9 Q. Okay.

10 **A. According to this report, it's not sufficient**

11 **to have it on the DVD jacket. It has to be on the DVD**

12 **itself or within the DVD.**

13 Q. And, so, that's a violation that is a felony?

14 **MS. WYER:** Objection.

15 Q. (By Mr. Murray) Is that correct?

16 **MS. WYER:** Objection.

17 **A. I'm no longer familiar with 2257; but based on**

18 **this report, it's indicating that it is a violation.**

19 **Yes.**

20 Q. (By Mr. Murray) And every violation of 2257

21 we've discovered is a felony, correct?

22 **MS. WYER:** Objection; misleading.

23 **A. For the violations that are listed, yes. I**

24 **believe it did say that the possible sentencing is up**

25 **to five years.**

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<p style="text-align: right;">Page 153</p> <p>(13:04-13:05)</p> <p>1 Q. (By Mr. Murray) I want to show you again</p> <p>2 Plaintiff's Exhibit 39 just so that we're --</p> <p>3 A. Okay.</p> <p>4 Q. -- clear about a couple of things.</p> <p>5 That's, as we've talked about, the 2257</p> <p>6 statute effective July 27, '06, correct? Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. And if you go to the second page of that, it</p> <p>10 is subsection (f) that specifies what shall be</p> <p>11 unlawful. Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And it says in subsection (f)(1) that it is</p> <p>14 unlawful for any person to whom subsection (a) applies</p> <p>15 to fail to create or maintain the records as required</p> <p>16 by subsections (a) and (c) or by any regulation</p> <p>17 promulgated under this section. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. So it's a violation if you don't comply with</p> <p>20 the statute in that regard and it's also a violation</p> <p>21 if you don't comply with the regulation in that</p> <p>22 regard, correct?</p> <p>23 MS. WYER: Objection. The witness is not</p> <p>24 a lawyer.</p> <p>25 A. As this reads, that's correct.</p>	<p style="text-align: right;">Page 155</p> <p>(13:06-13:07)</p> <p>1 Q. Okay. So, when you combine that with (f)(3),</p> <p>2 it is a violation of the statute as well as -- a</p> <p>3 violation of both the statute and/or the reg is a</p> <p>4 criminal offense?</p> <p>5 MS. WYER: Objection. Lack of</p> <p>6 foundation. Lack of legal foundation.</p> <p>7 A. That's how I would interpret it. Yes.</p> <p>8 Q. (By Mr. Murray) Thank you.</p> <p>9 On page 678, there was something entitled</p> <p>10 "Producer Response to Findings"; is that correct?</p> <p>11 MS. WYER: Are you back on exhibit --</p> <p>12 MR. MURRAY: Yes. I'm sorry. On</p> <p>13 Plaintiff's Exhibit 8.</p> <p>14 A. Yes. That's correct.</p> <p>15 Q. (By Mr. Murray) Okay. And you record what</p> <p>16 the responses were by the producer to your findings of</p> <p>17 violations, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And I notice in No. 5 it says, "Copies of</p> <p>20 identifications were later provided for 'Surveillance</p> <p>21 Sex' and the performers were properly identified with</p> <p>22 the exception of one male performer being</p> <p>23 unidentified." Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. But then you go on to say, "However, this</p>
<p style="text-align: right;">Page 154</p> <p>(13:05-13:06)</p> <p>1 Q. (By Mr. Murray) And subsection 2 says, "For</p> <p>2 any -- it shall be unlawful for any person to whom</p> <p>3 subsection (a) applies knowingly to fail to make an</p> <p>4 false entry in or knowingly to fail to make an</p> <p>5 appropriate entry in any record required by subsection</p> <p>6 (b) of this section or any regulation promulgated</p> <p>7 under this section." Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. So, again, a violation of both the statute and</p> <p>10 the reg is a crime, correct?</p> <p>11 MS. WYER: Objection. Calls for legal</p> <p>12 knowledge.</p> <p>13 A. As this reads, that's how I would interpret</p> <p>14 it. Yes.</p> <p>15 Q. (By Mr. Murray) Okay. And it goes on to say</p> <p>16 in subsection (3), "It shall be unlawful for any</p> <p>17 person to whom subsection (a) applies knowingly to</p> <p>18 fail to comply with the provisions of subsection (e)</p> <p>19 or any regulation promulgated pursuant to that</p> <p>20 subsection," correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And if you go to subsection (e), that's the</p> <p>23 section up above there that describes the requirement</p> <p>24 of putting the 2257 statement or label on, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 156</p> <p>(13:07-13:10)</p> <p>1 performer was obviously of legal age"; is that</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. So that just by looking at his image, you</p> <p>5 could tell that he was not a minor without even</p> <p>6 looking at an ID?</p> <p>7 A. That's correct. That would still be a</p> <p>8 violation, but the primary purpose obviously is to</p> <p>9 avoid having minors appear in this.</p> <p>10 Q. Sure.</p> <p>11 A. So, even though we didn't know what his age</p> <p>12 was, by looking at the photo we know he wasn't a</p> <p>13 minor.</p> <p>14 Q. Even in a case which it's perfectly obvious</p> <p>15 that the person in the image may be 40 or 50 years</p> <p>16 old, it's still a criminal offense not to maintain the</p> <p>17 record called for by the statute with respect to that</p> <p>18 performer, correct?</p> <p>19 MS. WYER: Objection.</p> <p>20 A. Yes. It would still be a violation.</p> <p>21 (Proceedings interrupted)</p> <p>22 Q. (By Mr. Murray) Agent, 682 page of</p> <p>23 Plaintiff's Exhibit 8 records your inspection</p> <p>24 procedures, correct?</p> <p>25 A. That's correct.</p>

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(13:10-13:11)

1 Q. And you began this inspection at 10:30 a.m.?

2 A. **Yes.**

3 Q. Now, was this one of the ones, since this was

4 in California, that would have been five to seven

5 Government personnel?

6 A. **This was in Florida.**

7 Q. Oh, I'm sorry. Then this would have been the

8 three to four or two to four?

9 A. **Three to four.**

10 Q. Yeah. You're right. St. Petersburg. Okay.

11 You provided the individual with the letter

12 that is similar to Plaintiff's Exhibit 32 --

13 A. **Yes.**

14 Q. -- or 34?

15 A. **Yes.**

16 Q. You took the photographs of the business,

17 where they stored the records, and where you inspected

18 the records, correct?

19 A. **That's correct.**

20 Q. It doesn't say that you made copies of the

21 records, but does that mean you didn't or is that, you

22 think, just an inadvertent omission in this report?

23 A. **That would have been an omission because we**

24 **did copy at every inspection that I remember.**

25 Q. Okay. And then you finished at 4:30, correct?

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(13:11-13:13)

1 A. **That's correct.**

2 Q. And you took a photograph before you left; is

3 that correct?

4 A. **That's correct.**

5 Q. So you were there for six hours?

6 A. **That's correct.**

7 Q. Did you get a lunch break?

8 A. **I would certainly hope so. I don't remember,**

9 **but I'm sure somebody at least went out and got some**

10 **food.**

11 Q. Okay. All right. So let's take a look at the

12 photos of this inspection, and the photo log appears

13 on page 704. And it looks like pictures were taken of

14 the outside of the building, the address of the

15 building, the conference room before the inspection,

16 file cabinets containing 2257 records, and the

17 conference room upon exit, correct?

18 A. **That's correct.**

19 Q. Okay. So, 707 shows the building in which the

20 business is located, correct?

21 A. **Correct.**

22 Q. 708 shows the address number, correct?

23 A. **Correct.**

24 Q. 709 shows a conference room, correct?

25 A. **Correct.**

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(13:13-13:14)

1 Q. With windows and a long table and chairs

2 correct?

3 A. **That's correct.**

4 Q. And the next photograph shows a room where

5 there are file cabinets, correct?

6 A. **That's correct.**

7 Q. And one of the file cabinets is open and you

8 can see that there's some records in it?

9 A. **That's correct.**

10 Q. And then the last picture again depicts the

11 conference room; is that correct?

12 A. **That's correct.**

13 Q. Okay. Now, you would agree with me, would you

14 not, again, with all the qualifications that we've

15 been talking about, that ordinarily, subject to all

16 those qualifications, the FBI would need a search

17 warrant to enter the areas that are depicted in these

18 photographs inside the building?

19 MS. WYER: Objection. Assumes facts not

20 in evidence; lack of foundation; calls for

21 speculation.

22 A. **With all the qualifications that we mentioned**

23 **and for a criminal investigation looking for evidence,**

24 **yes, it would require a search warrant.**

25 Q. (By Mr. Murray) And the same answer with

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(13:14-13:15)

1 respect to an examination of the records contained

2 within that room that is depicted in one of these

3 photographs. You would need a warrant with all of

4 those qualifications?

5 MS. WYER: Objection.

6 A. **Yes, with all the qualifications you**

7 **mentioned.**

8 Q. (By Mr. Murray) Okay. Let's take a look at

9 Plaintiff's Exhibit 9 which is Serial 15. And

10 on page 786 is the title page; is that correct?

11 A. **That's correct.**

12 Q. It shows the date of inspection June 27, 2007,

13 correct?

14 A. **That's correct.**

15 Q. Again, we've yet to find -- we've yet to come

16 upon any that happened before July 27, 2006, correct?

17 A. **That's correct.**

18 MS. WYER: Objection; misleading.

19 Q. (By Mr. Murray) Okay. Page 789, again,

20 you're the author of the Regulatory Inspection Report,

21 correct?

22 A. **That's correct.**

23 Q. And this was an inspection conducted of

24 which is a subsidiary of

25 correct?

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<p>(13:15-13:16) Page 161</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And I was present, correct,</p> <p>3 from ?</p> <p>4 A. That's correct.</p> <p>5 Q. Also present was the Vice President of</p> <p>6 Business and Legal Affairs for ?</p> <p>7 A. That's correct.</p> <p>8 Q. And someone whose last name was unknown,</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. After the inspection, it was determined</p> <p>12 that had one 2257 violation, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And that violation is recorded on page 791,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And it says, for the movie, "</p> <p>18 , " the photo identification for one of the</p> <p>19 performers did not contain a legible date of birth; is</p> <p>20 that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And that constitutes a violation of the</p> <p>23 regulation that you cited right underneath there,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>	<p>(13:18-13:19) Page 163</p> <p>1 A. That's correct.</p> <p>2 Q. And that inspection ended at 3:45 a.m.?</p> <p>3 A. That's correct.</p> <p>4 Q. So you were there for, let's see, I guess a</p> <p>5 little over five hours?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Then the photos begin on page 829, and</p> <p>8 there's a photograph of the</p> <p>9 building, correct?</p> <p>10 A. Okay. That's correct.</p> <p>11 Q. And then the next photo is of several filing</p> <p>12 cabinets?</p> <p>13 A. Yes, sir.</p> <p>14 Q. The next photo is of an area that includes, it</p> <p>15 looks like, a computer and a table, chair?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And the next photo is another view of that; is</p> <p>18 that correct?</p> <p>19 A. I can't tell if that's the same room or not.</p> <p>20 Q. Now, again, this was a -- this was a business</p> <p>21 premises, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And you were able to gain entry without delay</p> <p>24 under the authority of 2257 and the regulation?</p> <p>25 A. Yes, sir.</p>
<p>(13:16-13:18) Page 162</p> <p>1 Q. And they were able to come up, however, with a</p> <p>2 legible copy of the identification for that performer,</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. So go to page 793. You recorded both the</p> <p>6 pre-inspection procedures and the inspection</p> <p>7 procedures, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And this inspection began at 9:55 a.m.?</p> <p>10 A. That's correct.</p> <p>11 Q. You provided I with the letter of the</p> <p>12 kind that we've seen which is Plaintiff's Exhibit 32</p> <p>13 and 33 and 34?</p> <p>14 A. Correct.</p> <p>15 Q. You took the photographs before beginning the</p> <p>16 inspection, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Of the business and of where the records were</p> <p>19 maintained and where you were going to examine the</p> <p>20 records, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Again, you don't say here you made copies, but</p> <p>23 you're confident that you made copies, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And then you took a photo before you left?</p>	<p>(13:19-13:20) Page 164</p> <p>1 Q. And you were able under that same authority to</p> <p>2 look at the records, go to an area inside the building</p> <p>3 where the records were maintained, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. You were then able under the same authority to</p> <p>6 examine the records that you asked for, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. You then were under that same authority able</p> <p>9 to make copies of those records?</p> <p>10 A. That's correct.</p> <p>11 Q. And you were able to take photographs while</p> <p>12 you were there under that same authority?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And you were able to take the copies with you?</p> <p>15 A. Yes.</p> <p>16 Q. And you were able to do that all without a</p> <p>17 search warrant, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And all without probable cause, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And you would agree that, in the</p> <p>22 absence of 2257 and its implementing regulation, an</p> <p>23 FBI agent desiring to enter those same premises that</p> <p>24 are depicted here in these photographs and enter into</p> <p>25 those same areas that are depicted in this photograph,</p>

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(13:21-13:22)

1 absent exigent circumstances and absent voluntary
2 consent, would need a search warrant to conduct a
3 criminal investigation?
4 **MS. WYER:** Objection. Assumes facts not
5 in evidence; lack of foundation; calls for
6 speculation.
7 **A. With all the parameters that you had mentioned**
8 **and I had mentioned previously, yes.**
9 Q. (By Mr. Murray) Okay. And the --
10 **MS. WYER:** Are you okay?
11 **THE WITNESS:** Uh-huh. My eyes just get
12 sore after a while going back and forth.
13 Q. (By Mr. Murray) And your answer would be the
14 same, that a search warrant would be needed under all
15 of those conditions with the qualifications that I've
16 already enunciated for an FBI agent to examine those
17 records?
18 **MS. WYER:** Same objection.
19 **A. Again, with all the qualifications you had**
20 **mentioned and I had mentioned, yes.**
21 Q. Okay. Let's go to Plaintiff's Exhibit 10,
22 which is Darkside Serial 20. All right. This was an
23 inspection, was it not, done of Darkside Entertainment
24 in Van Nuys, California? I'm sorry. This was a
25 reinspection actually done on 4/9/2007; is that

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(13:22-13:24)

1 correct?
2 **A. That's correct.**
3 Q. And there were a couple of occasions where you
4 had a follow-up inspection based on some findings that
5 you made in your first inspection of a particular
6 business, correct?
7 **A. I recall at least two.**
8 Q. Okay. And this is one of them?
9 **A. Yes, sir.**
10 Q. Okay. All right. And this one was done by
11 you, this report on page 941. On April 30, 2007 is
12 when you did the report?
13 **A. That's correct.**
14 Q. And the reinspection was done on 4/9/07,
15 correct?
16 **A. That's correct.**
17 Q. And you continued to find some violations even
18 after the reinspection; is that correct?
19 **A. That's correct.**
20 Q. But you never found any minors at any of the
21 media for this company that you were investigating,
22 did you?
23 **A. No.**
24 Q. Meaning that's correct? You did not?
25 **A. You're correct. We didn't find a minor.**

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(13:24-13:25)

1 Q. And, again, the findings that you had on page
2 943 included there was one particular film apparently
3 where the records were not maintained at their place
4 of business?
5 **A. That's correct.**
6 Q. The second violation was that one of the
7 photos for a particular person was not identifiable?
8 **A. That's correct.**
9 Q. In other words, when you looked at the photo,
10 you couldn't confirm that it showed accurately or that
11 you were able to see what the person looked like or
12 what?
13 **A. That's correct. We couldn't match that with**
14 **the screen capture we had from the film.**
15 Q. And then the last one was the records were not
16 properly cross-referenced, correct?
17 **A. That's correct.**
18 Q. Okay. And on page 946 of this exhibit, it
19 shows, does it not, that you began your inspection at
20 9:30 --
21 **A. That's correct.**
22 Q. -- in the morning, correct?
23 **A. That's correct.**
24 Q. You presented the standard letter?
25 **A. That's correct.**

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(13:25-13:27)

1 Q. You took the standard photographs?
2 **A. That's correct.**
3 Q. You made copies of the records that you
4 examined?
5 **A. Yes.**
6 Q. And you left at 11:30 after about a two-hour
7 inspection, correct?
8 **A. That's correct.**
9 Q. And the photos that begin on page 969 show in
10 that case the entrance to the business; is that
11 correct?
12 **A. Okay. That's correct.**
13 Q. And then page 970 shows several filing
14 cabinets in the middle of the photo, and to the left
15 it shows some storage area?
16 **A. Yes.**
17 Q. Shelving?
18 **A. Yes.**
19 Q. And then the next picture shows more shelving
20 with various books and binders located there with
21 titles on the binders?
22 **A. Yes.**
23 Q. And then the next photo shows a work area
24 inside the building with a couple of chairs and a
25 table?

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<p style="text-align: right;">Page 169</p> <p>(13:27-13:28)</p> <p>1 A. Yes.</p> <p>2 Q. And another shot of that is shown on the next</p> <p>3 page, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And then another shot on the next couple of</p> <p>6 pages of that same area?</p> <p>7 A. That's correct.</p> <p>8 Q. Again, these are areas within the confines of</p> <p>9 this business entity, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And it is true that these are areas within</p> <p>12 this business entity? These offices, these shelving</p> <p>13 areas are areas that you would not be able to enter</p> <p>14 but for 2257 unless you had voluntary consent, exigent</p> <p>15 circumstances, or a search warrant?</p> <p>16 MS. WYER: Objection. Assumes facts not</p> <p>17 in evidence; lack of foundation; calls for</p> <p>18 speculation.</p> <p>19 A. With all the qualifications we had mentioned</p> <p>20 before, yes, that's correct.</p> <p>21 Q. (By Mr. Murray) Okay. And just so that I'm</p> <p>22 clear on what those qualifications are, it's got to be</p> <p>23 a -- you're saying it has to be official FBI business,</p> <p>24 an investigation of a criminal case or a criminal</p> <p>25 investigation, and with those qualifications on your</p>	<p style="text-align: right;">Page 171</p> <p>(13:29-13:31)</p> <p>1 MR. MURRAY: Oh, I'm sorry. This is</p> <p>2 Serial 9.</p> <p>3 Q. (By Mr. Murray) Page 1016 of this exhibit</p> <p>4 shows that this was an inspection done on March 13,</p> <p>5 '07, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Of I _____ in Vista,</p> <p>8 California?</p> <p>9 A. That's correct.</p> <p>10 Q. This one on page 1019 was done by Special</p> <p>11 Agent Lawrence; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. If you go to 1024, the inspection procedures</p> <p>14 that were followed, this one began at 10:50 a.m.</p> <p>15 according to Agent Lawrence's report, correct?</p> <p>16 A. Yeah. And, again, I was not present at this</p> <p>17 one. So, based on his report, it began at 10:50.</p> <p>18 Correct.</p> <p>19 Q. And the protocol was followed in terms of the</p> <p>20 photographs being taken both before and at the end,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. The records were reviewed and copies made of</p> <p>24 the records, correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 170</p> <p>(13:28-13:29)</p> <p>1 end, you would agree with the statement that you would</p> <p>2 need a search warrant to enter these areas if it -- if</p> <p>3 it weren't for 2257 unless you had voluntary consent</p> <p>4 or exigent circumstances?</p> <p>5 MS. WYER: Objection. It assumes facts</p> <p>6 not in evidence, including the assumption that these</p> <p>7 are private areas.</p> <p>8 A. Absent a 2257, yes, and what you just said, if</p> <p>9 it's a criminal investigation and there's a search for</p> <p>10 evidence of criminal activity for an area that is not</p> <p>11 public would require a search warrant.</p> <p>12 Q. (By Mr. Murray) Well, these areas were not</p> <p>13 public. You're not quibbling over that, are you, in</p> <p>14 this case? You're not suggesting that --</p> <p>15 A. For this one, I do recall that structure, and</p> <p>16 those are private areas within the business.</p> <p>17 Q. And your answer would be the same, that to</p> <p>18 look through those records, you would need a search</p> <p>19 warrant with all the qualifications contained in my</p> <p>20 previous questions?</p> <p>21 MS. WYER: Same objection.</p> <p>22 A. And with all the qualifications I had, yes.</p> <p>23 Q. (By Mr. Murray) Let's go to Plaintiff's</p> <p>24 Exhibit 11.</p> <p>25 MR. SAMONDS: Which one?</p>	<p style="text-align: right;">Page 172</p> <p>(13:31-13:33)</p> <p>1 Q. And the inspection ended at noon. So it was</p> <p>2 an hour and ten minute inspection; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And on this one, there were no violations</p> <p>5 found if I'm not mistaken? If you go back to page</p> <p>6 1019, it looks like at the very end --</p> <p>7 A. I'm sorry. What page?</p> <p>8 Q. Page 1019.</p> <p>9 A. Okay. That's correct.</p> <p>10 Q. All right. Now, let's take a look at the</p> <p>11 photo log. A total of ten photos were taken, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. The third photo was the -- I'm sorry. The</p> <p>14 first four were the title page and -- strike that.</p> <p>15 The first one was a title page. The next two</p> <p>16 were shots of the exterior of the building and the</p> <p>17 front door according to the log?</p> <p>18 A. That's correct.</p> <p>19 Q. Then a shot of the front door of an office was</p> <p>20 taken, correct, according to this?</p> <p>21 A. That's correct.</p> <p>22 Q. A conference room across from the office was</p> <p>23 taken a photo of, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Inside of the office with files on the desk</p>

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(13:33-13:34)

1 was taken, correct?

2 **A. Correct.**

3 Q. A second photo of the inside of the offices

4 was taken, correct?

5 **A. Correct.**

6 Q. Another photo of a computer screen was taken,

7 correct?

8 **A. Correct.**

9 Q. And then two more shots of conference rooms,

10 correct?

11 **A. Correct.**

12 Q. Now, it is true, is it not, that in your

13 experience, when you have a business premises that has

14 offices and conference rooms in it, those are not

15 generally open to the general public --

16 **MS. WYER:** Objection.

17 Q. -- like a retail store would be, correct?

18 **MS. WYER:** Objection.

19 **A. That would be my understanding. Yes.**

20 Q. (By Mr. Murray) I mean, for example, we're

21 sitting in a conference room right now, are we not?

22 **A. Correct.**

23 Q. It's not open to the general public here, for

24 example, just by way of example, correct?

25 **A. That's correct.**

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(13:34-13:35)

1 Q. And these photos -- beginning on page 1042,

2 there's a picture of this conference room, correct?

3 **A. Yes.**

4 Q. And it looks -- it's not the greatest picture,

5 but it looks pretty much like a normal conference

6 room, doesn't it?

7 **A. Yes.**

8 Q. Including it actually has artwork on the

9 walls?

10 **A. Yes.**

11 Q. And then the next picture shows boxes or at

12 least one box of records that is opened; is that

13 correct?

14 **A. Yes. Uh-huh. That's correct.**

15 Q. And the next picture shows that same box -- a

16 couple boxes of records that are open. I guess it --

17 does the log say that's in a conference room? Let's

18 go back and look at that.

19 No. That says "inside of office with files on

20 desk." So, after the conference room, you see there's

21 an office according to the photo log and this is a

22 picture inside that office with files open, correct?

23 **A. That's correct.**

24 Q. And is it your experience and understanding

25 that an office within a business premises -- that to

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(13:35-13:37)

1 enter an office within a business premises ordinarily

2 one needs an invitation?

3 **A. Yes.**

4 Q. All right. So then --

5 **MS. WYER:** Objection; vague.

6 Q. (By Mr. Murray) If you skip forward, there

7 appear -- the last pictures -- last two pictures

8 appear to be two more views of the conference room,

9 correct?

10 **A. I'm sorry. Which page was that again?**

11 Q. 1046 and 1047.

12 **A. That's correct.**

13 Q. So, given what we've just reviewed, you would

14 agree that, with the qualifications that we've

15 previously discussed in my question, ordinarily the

16 FBI would need a search warrant, including the

17 qualifications in your usual answer, correct?

18 **MS. WYER:** Objection.

19 **A. With all the qualifications we mentioned, yes,**

20 **that's correct.**

21 Q. (By Mr. Murray) And the answer would be the

22 same with respect to examining the records?

23 **MS. WYER:** Objection. Same objection as

24 I already stated.

25 **A. With all the same qualifications, yes, that's**

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(13:37-13:39)

1 **correct.**

2 Q. (By Mr. Murray) Okay. All right. We're on

3 to 12. We're making headway.

4 **A. Yeah.**

5 Q. Like I said, I'm glad you quit at 29. We

6 would be here a couple days.

7 **MS. WYER:** Which one is this?

8 **MR. MURRAY:** This is ... Serial 16.

9 **A. I have 12 that you just gave me.**

10 Q. (By Mr. Murray) Oh, I apologize.

11 **A. Diabolic.**

12 Q. Oh, here it is. No. That's --

13 **A. Diabolic Video.**

14 **MR. SAMONDS:** Here's ...

15 Q. (By Mr. Murray) Can I see that real quick?

16 **A. Sure.**

17 Q. Oh, okay. I gave it to you. I got you.

18 That's fine. 12. Okay. I'm sorry. That's Diabolic

19 Serial 24. I apologize. I think we have some photos

20 on that one, too. Okay.

21 **MS. WYER:** Could you wait? We haven't

22 found it.

23 **MR. MURRAY:** Yeah. Yeah.

24 **MR. SAMONDS:** I don't see Diabolic.

25 **MR. SAMONDS:** Can I make a quick copy of

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<p>(13:39-13:41) Page 177</p> <p>1 your Diabolic?</p> <p>2 MR. MURRAY: Sure. Yeah.</p> <p>3 MR. SAMONDS: While I'm making a copy, do</p> <p>4 you want to move on to 13?</p> <p>5 MR. MURRAY: Yes, if you don't mind.</p> <p>6 MR. SAMONDS: I'm happy to help.</p> <p>7 MR. MURRAY: Let's do that. Do you have</p> <p>8 a copy of your supplemental on Diabolic that you gave</p> <p>9 me? Because there's some pictures of Diabolic, I</p> <p>10 think. So if you --</p> <p>11 MR. SAMONDS: Was that the pictures?</p> <p>12 MR. MURRAY: Oh, I think you had that.</p> <p>13 Q. (By Mr. Murray) All right. 13 is I</p> <p>14 Serial 16. I'm showing you what's been marked as</p> <p>15 Plaintiff's Exhibit 13, Agent Joyner. The title page,</p> <p>16 you'll agree, I think, says it was an inspection on</p> <p>17 May 22, 2007 of I Enterprises in care of Pacific</p> <p>18 Business Capital Corporation in Costa Mesa,</p> <p>19 California; is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Where is Costa Mesa?</p> <p>22 A. I think it's Orange County, but I'm not sure.</p> <p>23 Q. All right. If you can turn to page 1119, this</p> <p>24 was one, again, done by Agent Lawrence, and he</p> <p>25 reported on July 25, '07, correct?</p>	<p>(13:43-13:44) Page 179</p> <p>1 A. Correct.</p> <p>2 Q. And then, since no one was left to run the</p> <p>3 company, I ceased all the</p> <p>4 records of I which ceased operations</p> <p>5 in late 2005, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And, now, Agent Lawrence would have gathered</p> <p>8 that information and put it in his report, correct?</p> <p>9 A. It's in the report.</p> <p>10 Q. In the ordinary course of an FBI agent's</p> <p>11 duties, he put it in the report because he obviously</p> <p>12 gathered that information?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. In any case, if you turn to the next</p> <p>15 page, it appears that on May 11, 2007 an inspection</p> <p>16 was attempted at residence based on</p> <p>17 information he had provided to the lead inspector.</p> <p>18 And the lead inspector is -- that's Agent Lawrence,</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. That's what that means? Okay. But he didn't</p> <p>22 have the 2257 records and he was interviewed to</p> <p>23 ascertain their whereabouts. So that led to this</p> <p>24 storage facility, correct, if you read on? I'm</p> <p>25 summarizing.</p>
<p>(13:41-13:43) Page 178</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And this was an inspection that was</p> <p>3 actually done at a storage facility that this business</p> <p>4 had rented, correct, and at the offices?</p> <p>5 A. I was not present for this one. So I just</p> <p>6 have to go by the report, and that's what the report</p> <p>7 states. That's correct.</p> <p>8 Q. And if you look at the Inspection Summary, as</p> <p>9 was the protocol, certain DVDs were ordered through</p> <p>10 the internet pertaining to this entity, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And then the last paragraph indicates that</p> <p>13 there was a -- that on 9/04, President of</p> <p>14, signed an Accounts Receivable</p> <p>15 Purchase & Security Agreement with</p> <p>16, and then in 2005 it was taken over</p> <p>17 by that company, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And then in August of '05, the</p> <p>20 custodian of records, was removed from his position,</p> <p>21 correct?</p> <p>22 A. That's what's stated in the report. Correct.</p> <p>23 Q. And then I took over</p> <p>24 position but subsequently suffered a -- and there's a</p> <p>25 blank. Probably some illness, correct?</p>	<p>(13:44-13:46) Page 180</p> <p>1 A. Yes.</p> <p>2 Q. Okay. All right. Anyway, if you turn to page</p> <p>3 1125, the inspection began at 11:00 a.m., correct?</p> <p>4 A. 1125?</p> <p>5 Q. Yes.</p> <p>6 A. Okay.</p> <p>7 Q. And according to paragraph four, the standard</p> <p>8 letter was provided, correct, to Mr. Cooper?</p> <p>9 A. Yes. Correct.</p> <p>10 Q. The standard photographs were taken at the</p> <p>11 storage facility and the location of the records</p> <p>12 storage of the 2257 records?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. The inspection lasted about two and a</p> <p>15 half hours, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And if you look at the photo log on page</p> <p>18 1149 -- take a look at page 1153. I think that's the</p> <p>19 best place to look. That looks like it's the storage</p> <p>20 facility, doesn't it?</p> <p>21 A. Okay.</p> <p>22 Q. 1153?</p> <p>23 A. According to the photo log, that's the storage</p> <p>24 area.</p> <p>25 Q. Okay. And then the next page would be inside</p>

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1 the storage area, correct?

2 **A. Correct.**

3 Q. And then the next page would be the files with

4 the records themselves, correct?

5 **A. Correct.**

6 Q. And the next page would be file cabinets?

7 **A. Correct.**

8 Q. Now, is it true that ordinarily, in the

9 absence of the exigent circumstances and other

10 qualifications, that, in the absence of 2257, if the

11 FBI wants to enter a storage area that somebody has

12 rented to store things, the FBI would still have to

13 get a search warrant?

14 **MS. WYER:** Objection. Assumes facts not

15 this evidence; lack of foundation; calls for

16 speculation.

17 **A. With all the qualifications we mentioned**

18 **before, yes.**

19 Q. (By Mr. Murray) Okay. Now, let's go back to

20 12. Okay. So, if you look at 1073, this was the

21 inspection of Diabolic Video Production in Chatsworth,

22 California on July 24, '06. Do you see that?

23 **A. Yes, I do.**

24 Q. This is the first one that we've come up

25 against that actually occurred prior to the version of

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(13:47-13:48)

1 2257 that is Plaintiff's Exhibit 39 and that was

2 effective July 27, '06, correct?

3 **MS. WYER:** Objection; misleading.

4 **A. That's correct. This is the first inspection**

5 **prior to that date.**

6 **MR. MURRAY:** Could I ask what is

7 misleading about those dates or about that question?

8 **MS. WYER:** A legal issue.

9 **MR. MURRAY:** Well, that's fine, but

10 what's that got to do with misleading? I don't want

11 to be misleading.

12 **MS. WYER:** It's misleading to suggest

13 that the statute -- that that statute was relevant to

14 these inspections.

15 **MR. MURRAY:** Why?

16 **MS. WYER:** Because the regulations were

17 promulgated pursuant to the previous version of the

18 statute.

19 **MR. MURRAY:** Okay. But he wrote a letter

20 relying on the '06 statute that for the first time

21 said it was a violation of the law to refuse the

22 inspections, but okay. All right. I understand your

23 objection.

24 Q. (By Mr. Murray) Okay. So this was -- but

25 this is the first one that we've encountered that

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(13:48-13:50)

1 occurred before July 27th of '06, correct?

2 **A. That's correct.**

3 Q. Okay.

4 **A. And this would have been the only inspection**

5 **that we conducted that was prior to that date.**

6 Q. Right. Okay. And you were the inspector

7 which makes sense because Agent Lawrence wasn't

8 on-board when this first started, right?

9 **A. That's correct.**

10 Q. Okay. So Diabolic was inspected at their

11 premises. The owner was present apparently; is that

12 correct?

13 **A. That's correct.**

14 Q. And on page 1076, we see that you began this

15 inspection at 10:50 a.m.?

16 **A. That's correct.**

17 Q. You took the photographs that were standard,

18 correct?

19 **A. That's correct.**

20 Q. You didn't give them a letter on this one,

21 though? You hadn't formulated the letter yet, had

22 you?

23 **A. I don't believe so. Yeah. I don't believe**

24 **so.**

25 Q. All right. You did the examination of the

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(13:50-13:51)

1 records that you were looking for, correct?

2 **A. That's correct.**

3 Q. You made copies of those records, correct, and

4 took them with you?

5 **A. That's correct.**

6 Q. You took the photographs before you left?

7 **A. That's correct.**

8 Q. And you ended the inspection at 5:30?

9 **A. That's correct.**

10 Q. So that particular inspection took a little

11 over six and a half hours; is that correct?

12 **A. That's correct.**

13 Q. Where did you record the results of the

14 inspection on this one?

15 **A. I do remember they didn't have any violations.**

16 Q. Okay.

17 **A. So, on the very last sheet, Finding Results.**

18 Q. Oh, there it is. Okay.

19 **A. Page 1111.**

20 Q. Now, I think the photos are in 31, if I'm not

21 mistaken. Yes. Okay.

22 **MR. MURRAY:** Do you have 31? Kathy, do

23 you have a copy of 31 for yourself?

24 **MS. WYER:** Yes.

25 **MR. MURRAY:** Okay.

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<p style="text-align: right;">Page 185</p> <p>(13:51-13:52)</p> <p>1 Q. (By Mr. Murray) All right. I'm showing you</p> <p>2 what's been marked as Plaintiff's Exhibit 31. You can</p> <p>3 see that in a supplement we were provided with the</p> <p>4 photos for the Diabolic Video inspection of 7/24/06?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And I don't necessarily have a log, but</p> <p>7 the photos show a building which appears to be a</p> <p>8 business premises, correct?</p> <p>9 A. Yes.</p> <p>10 Q. It doesn't appear to be a retail store or</p> <p>11 anything though, does it?</p> <p>12 A. No.</p> <p>13 Q. It wasn't a retail outlet?</p> <p>14 A. No, it wasn't, I don't believe.</p> <p>15 Q. Page 3192 shows what?</p> <p>16 A. Appears to be an office.</p> <p>17 Q. Okay. What about the next page?</p> <p>18 A. The outside door to the business.</p> <p>19 Q. And the next page?</p> <p>20 A. The parking lot and I assume the outside of</p> <p>21 the structure.</p> <p>22 Q. And 3195?</p> <p>23 A. An office.</p> <p>24 Q. And 3196?</p> <p>25 A. An office.</p>	<p style="text-align: right;">Page 187</p> <p>(13:54-13:55)</p> <p>1 that the general public does not ordinarily have</p> <p>2 access to except upon invitation?</p> <p>3 A. Yes.</p> <p>4 MS. WYER: Objection; lack of foundation.</p> <p>5 Q. (By Mr. Murray) And that, therefore, again,</p> <p>6 with the normal qualifications that we've already</p> <p>7 talked about, the FBI would ordinarily need a search</p> <p>8 warrant based upon probable cause to enter those areas</p> <p>9 in a criminal investigation?</p> <p>10 MS. WYER: Objection. Assumes facts not</p> <p>11 in evidence; lack of foundation; calls for</p> <p>12 speculation.</p> <p>13 A. With all the qualifications we mentioned</p> <p>14 before, yes.</p> <p>15 Q. (By Mr. Murray) And the answer would be the</p> <p>16 same? With all those qualifications, the FBI would</p> <p>17 need a search warrant to examine the records that were</p> <p>18 examined and to make copies and take them away?</p> <p>19 MS. WYER: Same objection.</p> <p>20 A. With all the qualifications we mentioned, yes.</p> <p>21 Q. (By Mr. Murray) Thank you.</p> <p>22 THE WITNESS: I just noticed we're</p> <p>23 creating a sound barrier. Should I move that or not?</p> <p>24 THE REPORTER: It's okay.</p> <p>25 THE WITNESS: Okay.</p>
<p style="text-align: right;">Page 186</p> <p>(13:53-13:54)</p> <p>1 Q. 3197?</p> <p>2 A. Stairwell.</p> <p>3 Q. 3199?</p> <p>4 A. A hallway.</p> <p>5 Q. 3200?</p> <p>6 A. File cabinets.</p> <p>7 Q. 3201?</p> <p>8 A. An office.</p> <p>9 Q. 3202?</p> <p>10 A. File cabinets.</p> <p>11 Q. And 3303?</p> <p>12 A. It looks like an office with file cabinets.</p> <p>13 Q. Do you know who the person is depicted in</p> <p>14 there?</p> <p>15 A. I believe she was the sister-in-law of the</p> <p>16 owner and the custodian of records.</p> <p>17 Q. Okay. And the next is another showing of the</p> <p>18 file cabinets?</p> <p>19 A. Yes.</p> <p>20 Q. And another view of the office?</p> <p>21 A. Yes.</p> <p>22 Q. And the next one?</p> <p>23 A. It looks like another view of the office.</p> <p>24 Q. Okay. All right. Now, you would agree with</p> <p>25 me that those offices and storage areas are places</p>	<p style="text-align: right;">Page 188</p> <p>(13:55-13:57)</p> <p>1 Q. (By Mr. Murray) Okay. Next is 14 which is</p> <p>2 Serial 17. And, Agent Joyner, can you tell me what</p> <p>3 this documents, what inspection?</p> <p>4 A. This was I</p> <p>5 Q. What was the date?</p> <p>6 A. December 19, 2006.</p> <p>7 Q. And where?</p> <p>8 A. In Chatsworth, California.</p> <p>9 Q. Okay. And if you turn to page 1202, who was</p> <p>10 the author of the report?</p> <p>11 A. I was.</p> <p>12 Q. And the date that you authored the report?</p> <p>13 A. January 8, 2007.</p> <p>14 Q. Okay. The general manager was present during</p> <p>15 this inspection?</p> <p>16 A. Yes, he was.</p> <p>17 Q. And you found two violations, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. One photo identification did not have a</p> <p>20 legible date of birth and no photo identification was</p> <p>21 initially available for another performer, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. But in response to those findings on</p> <p>24 page 1204, you were provided with a legible photo for</p> <p>25 the one where the date of birth couldn't be detected?</p>